

5 Ma
The Ancient *5 Ma*
Method
Francis AND Hargrave
MANNER
Of Holding
Parliaments
IN
ENGLAND.

By *Henry Elsyng*, Esq;
Sometime Clerk of the Parliament.

The Third Edition Enlarged.

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FH

MVSEVM
BRITANNICVM

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CHAP. I. Of Summons.

Who were Antiently Summoned to Parliament.

ARchbishops, and Bishops,
*Ratione specialis dignitatis
& tenuræ.*

All Abbots and Priors
which held by an Earldom or a Ba-
rony, *Ratione tenuræ.*

All Earls and Barons by reason of
their Inheritable Nobility and te-
nure, and their Peers also, *ratione
tenuræ.*

The Judges and Barons of the
Exchequer, the Kings privy Coun-
cel, and his learned Council were
summoned also, but *neque tenuræ, ne-
que dignitatis ratione*, and they made
no Proxies for they had no voice.

The Knights of the Shires.

The Barons of the Cinque Ports.

B

The

The Citizens & Burgesſes were ever elected and ſent to the Parliament.

The Officers, as the Clerk of the Crown.

The Clerk of the Parliament, and the gentleman-Uſher attended *Ratione officii* without any ſummons.

Whether the Summons were anciently by one general Writ or particular Writs.

It appears in that Antient Manuſcript, *Modus tenendi Parliamentum*. That Arch-Biſhops, Abbots, and Pryors which held by *Baroniam*, ſummoneri debent.

Minores Clerici nec minores laici non ſummoneri debent, ſed ſi eorum preſentia neceſſaria fuerat, Rex ſolebat talibus brevia ſua mittere, Rogand. quod Parliamentum ſuum intereſſent.

Hence it may be gathered, that in thoſe times, viz. before the Conqueſt, the Lords ſpiritual and temporal, and the Peers were ſummoned to Parliament by one general Summons, and that the others who were neither Lords nor Peers had particular Writs, but it is unlikely that *William the Conqueror* did ſend out

out such Summons to the Lords: For how could the antient Baronage (who were translated by Conquest to the Normans) take notice thereof, their Lands, and Honors being seised for the King? It is probable he sent particular Writs of Summons to his Normans (new created Lords) and to such English (if any) as he continued in that degree of honour. *Vide Math. Paris. page 247. in Charta. R. his summoneri faciemus omnes Archiepisc. Episc. &c. Comites & Majores Barones, Regni nostri singulatim per literas nostras, &c.*

But as touching the Peers. Their Summons during his time continued as before, for it follows in the same Charter, *Et praterea faciemus summoneri in generali per vice-comites & ballivos nostros omnes alios qui in Capite tenent, &c.*

By these tenants *in Capite*, understand those onely who held land *in capite* of the King (*Ad valentiam unius comitatus, vel Baronie integra*, as it is in that antient Manuscript, *modus tenendi Parliamentum*) and they are there named Peers.

Divers learned Heralds not knowing any difference between the *Lords* and their Peers have run into these errors, *viz.*

First, that all heretofore came to Parliament who had Lands of an entire County or Barony, and that *Henry* the third, having smarted by such a confused company of Barons, did (after the battail of *Evesham*) first ordain, that those Earls and Barons to whom he directed his writs, should only come to Parliament, for which they vouch no Record, but only the first Writ of Summons extant, *Ann. 49. H. 3. 14. December*, and affirm the same to be after the battail of *Evesham*, & that this was the first time that Barons were called by special Writs.

Secondly that the Writ of Summons did create a Baron.

Thirdly, the first Writ did ennoble the person so created, and if the Son was also summoned, then the blood was ennobled.

Not observing the difference between Peers & Barons, the one being admitted *ad libitum regis*, the other never

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never if once created, being of full age, within the Land, and *Rectus in Curia*, as shall be declared hereafter in this Chapter.

The first of these is easily refuted and satisfied, for the practice appears to be otherwise touching the Earls and Barons in the time of King *John*, as by the aforesaid Charter in *Mathew Paris*.

And the very date of the Writs which are vouched, proves, that the practise was also in *H. 3.* time, who began his Raign the *xixth.* of *October*, and the Writs of Summons bear date in *December*, and the battail of *Evesham* 49. *H. 3.* happily this King did first ordain that no Peer should come to Parliament, unless such as had particular Writs of Summons, and therefore the Heralds are to be excused, for the Peers once Summoned, have been reputed Lords of Parliament, and the Peers have been anciently stiled Barons, Vide Mr. *Selden* in his *Titles of Honour*: That *Matthew Paris* saith, that *Hen. 3.* did number 250 of his Barons (who were as I conceive, *Barones*

minores or Peers) and not those who were Barons by Inheritance, whom *Mathew Paris* in the other place styles *Barons Majores*, for they never attained to that number: Also by this word (Peers) are understood all the Lords spiritual and temporal in the second Parliament of 15. E. 2. & 1. E. 3. touching the banishment of the *Spencers*; so that the Heralds might easily be deceived therein, especially since the Writs unto Barons and Peers, were all one, and they were ranked together promiscuously in the Book of Summons, and some Peers placed there above antient Barons.

But of this (*viz.*) that Peers were summoned, and omitted again (*ad libitum Regis*) And that Barons were ever created by Investiture of Robes, and that the Writ only did create a Baron, and that the first Writ did enoble both the person & blood of him that was created: more shall be said hereafter in this Chapter in the title of Omission.

Here I will only remember that this word (*Baron*) was anciently a
ge-

general name to all those that held power of Judicature) as well as to the Parliament Barons: the Freeholders in a Court Baron were anciently named Barons, and that Court stiled (*Curia Baronum* in respect of them, and not (*Curia Baronis*) as now in respect of the Lord of the Mannor; and the Aldermen of *London*, were anciently so named, and that they of the *Cinque ports* retain it to this day, and so do the Barons of the Exchequer who were first called (*Sagi Barones*) for they were, *sagaces ad Compotes recipiendos & allotandos*.

§. 2. The ancient form of the Writ.

THE first writ of Summons extant upon Record, is that of 49. H. 3. viz.

Henricus, dei gratia, Rex Anglia, Dominus Hibernie, & Dux Aquitania, venerabili in Christo patri. R. eadem gratia Episcopo Dunelm. Salutem. cum post gravia turbationum discrimina dudum habita in Regno, Charissimus filius Edvardus primo ge-

nitus noster, pro pace in regno nostro
 assensuranda, & firmanda, ob ses tradi-
 tus extitisset, & jam feduta (benedictus
 deus) turbatione, pradiſta ſuper deli-
 beratione ejuſdem ſalubriter providen-
 da, & plena ſecuritate, & tranquil-
 litate pacis, ad honorem dei, & Uti-
 litatem totius Regni noſtri firmanda,
 & totaliter complenda, ut ſuper
 quibuſdam aliis Regni noſtri negotiis,
 que ſine conſilio veſtro, & aliorum pra-
 latorum & magnatum noſtrorum no-
 lumus expediri; cum iisdem tracta-
 tum habere nos oportet: vobis manda-
 mus, Rogantes in fide & dilectione
 quibus nobis tenemini, quod omni occa-
 ſione poſt poſita & negotiis aliis pre-
 termiſſis, Sitis ad nos London, in
 Octabis ſanct. Hillarii proxim. futur.
 nobiſcum, & cum pradiſtis prelatiſ,
 & magnatibus noſtris quos ibid. vo-
 cari facimus ſuper premiſſis tractatur.
 & concilium impenſur. & hoc ſicut nos
 & honorem noſtrum & veſtrum, nec
 non & communem Regni noſtri tran-
 quilitatem diligitis, nullatenus omit-
 tatis: Teſte me ipſo xiiii. Decemb.
 Ann. regni noſtri 49 eodem modo
 mandatum eſt Episc. Carl. & c. ſub
 data xiiii. Decemb. In

In forma predict. subscribitur Abbot. & Prioribus subscriptis, &c.

Subdata apud Woodstock xiiii. Decemb.

In forma predict. mandatum est comitibus & aliis subscriptis dat apud Woodstock, viz.

Comiti Leiceſter

Comiti Gloceſter.

Comiti Norf.

& Mareſchal. Angl.

Comiti Oxon.

Comiti Derby.

Rad. de Camois.

Rogero de ſanct. Johanne

Hugo de Spencer. Juſtic. Anglie.

Johanni filii Johannis

Will. de Munches.

Nich. de Segrave

Johanni de Veſcye

Rad. Baſſet de Drayt.

Henrico de Haſtings

Galfrid. de Lucie

Roberto de Roes

Johanni de Eynil

Ada de Novo Mercato

Waltero de Colvil

Gulielmo de Wyrmingey.

B. 5

Rog.

Rogera de Bertram

Roberto Rasset de Sapcott.

Gilbert. de Gaunt

Item Mandatum est singulis Comitibus per Anglaim quod venire faciant duos Milites de legaliorib. & discretioribus militibus singulorum Committat. ad Regem, Lond. in Octabis prædictis in forma prædicta.

Item in forma prædicta scribitur Civibus Ebor. Civibus Lincoln. & Ceteris Burgensibus Angliæ, quod Mittant.

Item in forma prædicta Mandatum est Baronibus, & probis hominibus quinq; Portuum, &c.

*The difference between this Writ,
and the Writ at this day.*

This is special, declaring the cause of the Summons, and so were divers others of *Edw. the first, Edw. 2. Ed. 3. and Rich. 2.* but for the most part they were general as at this day, and none special after the seventh year of *Rich. 2.* But Vide *Matthew Paris*, page 247.

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11

*in Charta Regis Johannis in omnibus litteris submonitionis illius Expone-
mus, &c.*

And also this Writ was alike un-
to the Lords and Judges (for such
were *Johannes de Eynil*) and they
that followed; and so the Writs
were all alike in divers yeares of
Edw. 1. in most of *Edw. 2.* and
in many of *Edw. 3.*

Of the title of the party summoned.

The Bishops Christen-names
were ever mentioned and
stiled anciently *Venerabili in Christo*
Patri, &c.

But of the latter times the Arch-
bishop is stiled *Reverendissimus*, and
all others *Reverendi in Christo Pa-
tres.*

The Christian names of the Ab-
bots and Priors were never men-
tioned, they were stiled *Dilecto in*
Christo Abbati Sanct. Augustini, &c.

The Title of the Prince.

I Find no other Attribute to the Prince, then *Charissimus* in the time of *E. 1. E. 2. and E. 3. and H. 4.* And that is omitted in 24. *E. 3. and in the 26. E. 3.* It is thus, *Rex dilecto, & fideli Edwardo Principi Wallia, Duci Cornubie, & Comiti Cestrie, salutem.*

The Titles of a Duke, Earl, and Baron.

Were stiled all alike, *Prout, dilecto, & fideli suo Henrico duci Lancast. salute, Anno 29 E. 3.* Neither had any of the Kings Brethren, Nephews, or Uncles, any other title in the time of *Edw. 1. Edw. 2. and Ed. 3.*

But when *E. 3.* had created his own Children Dukes, and Earls, then they were stiled *Filii sui Charissimi*: And *R. 2.* named them *Avunculos, or Consanguineos suos Charissimi*, but no other had that Attribute of *Charissime* in the title of

of his Writ, although he were the Kings kinsman, prout *Anno 16 E. 2. dilecto & fideli Consanguineo Ricar. Comit. Arundel, & Surrey.*

The Titles of Barons and Peers.

They never had any other title then *dilecto & fideli*. After the French Wars some of them had the addition of *Chivaler*: The first so stiled was *William de Aldeburgh*, Ann. 49 E. 3. I remember no other in the time of E. 3. but *Wells*, eodem Anno. 49 E. 3. in the Prorogation of that Parliament, and he was summoned without that Addition: *Anno 50. E. 3.* and after during his life.

And some 4. had that Addition, *Annis R. 2. H. 4. & H. 5.* but after 3. H. 6. they all had that title of *Chivaler*, but it was not anciently a Note of honour, for in *Annis 1, 2, & 3 R. 2.* some of the Judges had the same, viz. *John Knevet*, and *Roger de Aston*.

The title *Baron* had *Dominus* in the Writ.

The

The Lord *Stafford* and *Greystocke* were usuallly summoned by the title of their Barony, prout *Anno 27 E. 1. Edw. Baroni de Stafford, Anno 23. E. 1.*

Johanni Baroni de Greystocke, omitting their Sirnames of *Bagot*, and I find others in the time of *H. 6.* who had the title of *Dominus*, happily they were but then created, which I leave to the search of others, I will onely recite their names.

Edwardo de Grey, domino de Ferrariis de Grobye Henrico de Piercye, Carol. domino de Poynings, An. 25 H. 6. 24 Decemb.

Johanni de Beauchamp, Militi, domino Beauchamp, Jacobo Fienes Militi domino de Saye, & de Sele, Anno 27 H. 6. 20 Januarij.

Roberto Hungerford Militi domino de Moleyns, Willielmo Bouchier Militi domino Fitzwaryn, Willielmo Beauchamp Domino de sancto Amand. teste R. apud Westminst. 17 die Maij, Anno 27 H. 6.

R. dilecto, & fideli suo Henrico Bromslet Militi, Baroni de Vessye.
salu-

salutem, quia, &c. Volumus enim vos, & hered. vestros Masculos, de corpore vestro legitime exeuntes Barones de Vessei existere. Teste Rege apud Westminster 24. day of Januarij, Anno 27 Henry 6.

R. dilecto & fideli suo Willielmo Bonevill Militi domino de Clinton salutem quia, &c. sicut in aliis brevibus T.R. apud Westminster x die Martii, Anno 27 H. 6.

Johanni Sturton Militi, domino Sturton, Anno 28. H. 6. — per ipsum Regem.

Edwardo Nevil Militi, domino de Bergaveny, Thoma domino de Roes Thoma Grey dom. de Ruthin, Thoma Piercy Militi domino de Egremont, Willielmo Fines, Militi domino de Say, Anno 29 H. 6. T.R. 23 April.

Per ipsum Regem.

J*ohanni Domino de Clinton, Anno 33 H. 6. 26 Maij, Thoma Stanley, Militi domino de Stanley T. R. 15 die Januarij per ipsum Regem & consilium in Parlamento, summoned to the Parliament of the 33 H. 6. and 34. H. 6.*

Richardo

Richardo Fines domino de Dacre Militi, Richard. Wells, domino Willoughby, Militi Johanni Clifford, domino de Clifford, Militi eodem Anno Johanni Nevil, domino de Nevil T.R. apud Coventry 20 Novemb. per litter. de privato Sigillo, Anno 38 H. 6. 30 Julii, per ipsum Regem.

Johan. Nevil domino de Mountag. Chr. &c. And in all these times the summons to the Lord Gristock, are *Rad. Greystock Chr.* omitting Barony, which he had in his ancient Writs.

And these Lords who in the time of *H. 6.* (Barons being then most usually created by patent) were styled *Domini*, had their summons in *E. 4.* not the word *Chivaler* onely, since when they all have no other Addition.

To the Judges.

THE Judges ever had the title of *Dilecti & fideles* in their Writs, and retain the same to this day.

Next to the title is considerable the form of the *Mandamus*, how it is to the Lords Spiritual, and how to the Lords Temporall, and the Judges,

Judges, and others of the Kings learned Council.

And then (what the Lords and what the Judges) and others were commanded to do by their Writs or Summons:

The Mandamus to the Bishops.

Vobis Mandamus in fide & dilectione quibus nobis tenemini, quod, &c. Anno 49 H. 3. Vos effectuose requirimus, et Rogamus quod, &c. Anno 27 E. 1.

Vobis Mandamus quod, &c. Anno 32 E. 1. & 5 E. 3.

Vobis Mandamus firmiter Injungentes quod, &c. Anno 2. E. 2. Anno 1 E. 3. And in all other Parliaments thus:

Vobis Mandamus in fide et dilectione quibus nobis tenemini, firmiter Injungentes quod, &c.

And so it continues unto this day, and the like to the Abbots and Priors.

The

The *Mandamus* to the Temporal
Lords, *Anno* 49 E. 2.

After the Writ to the Bishops
which is entred at large, it
followeth in the Roll.

*Item in forma prædicta Mandatum
est Comitibus, &c.*

And I find the *Mandamus* to the
Lords Temporal, *Anno* 23 E. 1.
bis, et *Anno* 24 E. 1. & *Anno* 2 E. 2.
to be *In fide et dilectione* as to the
Bishops, *Anno* 6 Ric. 2. *Consimile*
to the Duke of Lancaster.

But in all other Summons. *In fide
et homagio* until 22 Ed. 3. and 25
Ed. 3. And then the summons to the
King of Scots, and Prince of Wales,
In fide et Legiantia: And *Anno* 45
E. 3. *Consimile* to them all, and so
it continues to this day.

*Vobis Mandamus in fide et legian-
tia quibus nobis tenemini, firmiter In-
jungentes quod, &c.*

The next observation in the Writ of Summons, is what they are commanded to do :

The Lords Spiritual and Temporall, are *Tractatur cum Rege, et Cæteris Prelatis, Magnatibus, et proceribus et Consilium suum impensur.* - But the forms hereof in the ancient Writs of E. I. are divers, prout.

To the Bishops.

ANno 23 E. I. Super quibusdam Arduis negotiis nos et regnum nostrum et vos ceterosq; Prelatos de eodem Regno tangentibus, que sine vestra et eorum presentia nolumus expediri vobis, &c. quod, &c. Sitis, &c. super dictis Negotijs tractaturi, et vestrum Consilium impensuri, 23 Junij.

To the Temporall Lords.

Eodem Anno 23 Junij, supra quibusdam, &c. Nos, & Regnum Nostrum & vos ceterosq; proceres & mag-

magnates de eodem Regno tangentibus qua sine, &c. Ut supra.

To the Judges, eodem An.

Super quibusdam arduis negotiis
 Nos & Regnum nostrum ac vos ca-
 terosq; de consilio nostro tangentibus
 que sine, &c. Ut supra in Mandat.
 Episc.

The Writ to the Bishops. recites
 the wrong done by the French King
 in Gascony, and his Army, prepared
 to invade England it self: And then
 thus, 23. Ed. 1. 30 September.

*Quia provisa facula minus ledant
 & res nostra maxima sicut ceterorum
 Regni consilium agitur, in hac parte
 vobis Mandamus in fide & dilectione
 quibus nobis tenemini, firmiter injun-
 gentes quod die dominica proxima. post
 festũ Sancti Martini in hieme proxim.
 futurum apud Westminster, personali-
 ter intersitis premonuentes Priorem et
 Capitulum, &c. Ad tractandum,
 ordinand. & faciendum nobiscum &
 cum Ceteris Prelatis & proceribus &
 aliis Incolis Regni nostri qualiter sit
 hujusmodi periculis, & excogitatis
 malitiis obviandum, T. R. &c*

Con-

Conſimile to the Earls & Barons, &c. omitting onely the Claufe *Premunientes*.

By theſe words, *alijs Incolis Regni* are underſtood the Commons, who have no ſuch command in any other Writ (this onely excepted;) Neither had the Clergy any ſuch command in any other Writ then this :

Memorand. that this time the King obtained a great ſubſidy of the Clergy and Laity.

To conclude this point, the Lords were ſummoned to treat with the K. and the other Lords, and to give their Counſel.

Onely in this laſt recited Writ is omitted, to give Counſel.

The Judges and others of the Kings Council.

They are *Tractare cum Rege & cum Ceteris de conſilio Regis & conſilium ſuum impendere, &c.* Prout *nobiſcum, & cum ceteris de conſilio noſtro ſuperdictis Negotijs tractaturi veſtrumq; conſilium impenſuri, &c.*

Conſimile in moſt years. of *Ed.*

yet their Writs were oftentimes all one with those to the Lords, prout Anno 23 E. 1. and 27 E. 1. and in most years of E. 2.

The first Parliament of E. 3. agreed with that of 28 of E. 1. viz. *Tractatur vobiscum & cum Ceteris de Consilio nostro vestrumque consilium impendere*, prout Anno 4 E. 3. & 5, 6. & 7. &c. Vsq; 20 E. 3.

From the 20 year of E. 3. until the 46. their Writs agree with the Lords in this Clause (viz.) *Vobiscum & cum dictis Prelatis, Magnatibus, & proceribus dicti Regni nostri tractaturi, vestrumq; Concilium impensuri.*

And in two Parliaments of E. 3. (viz.) Anno 1 E. 3. 11 Decemb. & 2. E. 3. it is *Nobiscum tractatur*, &c. omitting *& cum Ceteris de Consilio.*

Anno 27 E. 1. it is *Nobiscum & cum Prelatis, Magnatibus, & proceribus & alijs de consilio nostro*, &c.

But from 46 of E. 3. to this day, it agrees with that of 28 E. 1. (viz.)
Nobiscum

Nobiscum & cum ceteris de consilio nostro, &c.

Per Clerum.

THe Bishops were summoned to appear themselves in person and to warn the Clergy of their Diocess to appear in this manner (*viz.*)

The Dean and Pryor of their Church, and the Arch-Deacons of every Deanery of the Diocess to appear in person.

The Chapter of the Church were to send one Proctor, and the Clergy of the Diocess two, *Plenam et sufficientem potestatem ab ipsis Capitulo & Clero habentes, ad faciendum, & consentiendum is que tunc ibidem de communi consilio (divina favente Clementia) ordinari contigerint, &c.*

Anno E. 3.

In the first summons Anno 23 E. 1. where this Clause is recorded in the Bishops Writs, it is,

Ad tractandum, ordinandum, et faciendum nobisc. & cum Ceteris Prelatis, & Proceribus, et aliis Incolis Regni nostri, &c.

But

But this cannot be, alledged for a præcedent, for it is not to be found in any of the former, or subsequent Writs, they all agreeing with this of 4 E. 3.

Here may be a question, whether the Clergy did anciently come to the Parliament (without the Kings WRIT they cannot come;) And they are omitted in the first Summons which we have recorded (*viz.*) An^o 49 H. 3. And in the first Parliament of 23 E. 1. and in divers other following Parliaments, *prom* An^o 27 E. 1. Febr. 6. An^o 28 E. 1. Septemb. 26. An^o 3 E. 2. Octob. 26. An^o 16 E. 2. Septemb. 18. & An^o 6 E. 3. 26 July, but never after the 6 year of E. 3. *quare rationem.*

Per Communicatem.

The Commons were not summoned, but elected upon the Kings Writs to the Sheriff, &c. as shall be declared in the end of this Chapter, and were commanded to come to the Parliament, *Plenam, & sufficientem potestatem habentes ad faciend.* &

& consentiend. de hiis qua de communi consilio (faventi Dom.) ordinari contigerint, &c. An. 4. E. 3.

With this Writ agree all the former and subsequent Writs; divers additions have been by statute touching the Election, but this Clause never altered.

The Lords Spiritual and Temporal are to treat with the King, and the other Lords present, and to give their counsel.

The Judges are to treat with the King and the rest of his learned Council.

The Clergy are to come with power to do and consent unto that which shall be ordained by the Common Council of the Land, the Parliaments.

And this is the cause that all Judgements in Parliament were given by the Lords, and not by the Commons, yet they were parties to the Refusall of Judgements given in Parliaments.

All Petitions directed to the King and his Council were handled by the Judges (and by the Kings Council)

cel) and by them prepared for the Lords (if need were) but never by the Commons,

* All Ordinances made in Parliament (*in Pleno Parlamento*) were made by the Lords and Commons) all Ordinances made *per Commune Concilium*, were made by the Lords and Commons. But of this more in the second Book.

I will onely add this ; whatsoever began by the Commons was anciently termed (*Petition*) for they had no power to ordain : And whatsoever began with the Lords, (*An Ordinance.*)

Petitions were exhibited by private persons to the King and his Council, or to the Commons.

Ordinances were either by the Lords alone about some particular business, or an Act of the Lords and Commons, and consented unto by the King, but not to have continuance for ever.

Actus Parliamenti, was an Act made by the Lords and Commons, (*statutum*) when the King had consented to the Act.

By

By what warrant the Writs of Summons were made.

I doth not appear by the first Record of Summons now extant, *Anno 49 H. 3.* by what Warrant the Lord Chancellor caused the Writ of Summons to be made, the King was then prisoner unto *Mountford*, his sometime Minion.

But Surely none but the King can summon the Parliament; and this is the Reason that *H. 4.* having taken his Liege Lord, King *Rich. 2.* prisoner, on the 20th. day of *August*, *Anno 23.* did cause the Writs of Summons for the Parliament, wherein he obtained the Crown, to bear date the 19 day of the same moneth, and the warrant to be *per ipsum Regem & consilium*, and himself to be summoned by the name of *Henry Duke of Lancaster*.

The Warrant hath been divers, sometimes *per breve de privato sigillo*, but commonly *per ipsum Regem*, or *per ipsum Regem & Consilium*.

If the King hath been absent, and

a *Custos* appointed (as the manner is,) the Writ bears the *Teste* by the *Custos*, and the Warrant is *per ipsum Regem, & dominum Custodem, & Consilium*, prout, Anno 3 E. 3. *Teste Edwardo Duce Cornubie, &c. Custode Anglie.*

Per ipsum Regem, et Dominum Custodem, & Consilium, Anno 20 E. 3. *Consimile*, Anno 9 H. 5. *Teste Johanne Duce Bedford, Custode Anglie.*

Per ipsum Regem & Consilium. Anno 9 H. 6. The King being in Paris, *Teste Humphreido Duce Gloucester, Custode Angl. per breve de privato Consilio.*

But if the King be within the Land, though (within Age) and a Protector appointed him, he alone is *Testis* to the Writ, and Warrant, *per ipsum Regem*, prout Anno 1 H. 6. and sometimes *per ipsum Regem & Consilium, &c.*

But for many Summons, the Warrant is not recorded.

The form of the War- rant.

JAMES by the grace of God,
King of *England, Scotland,*
France, and Ireland, Defender of
the Faith, &c. To our Right Trusty,
and wel-beloved Chancellour, *Tho-*
mas Egerton, Chancellour of *Eng-*
land, greeting. Whereas we by our
Councell for certain great and ur-
gent causes concerning us, the good
Estate and Common wealth of this
our Realm, and of the Church of
England, and for the good order
and continuance of the same; have
appointed and ordained a *Parlia-*
ment to be holden at our City of
Westminster, the first day of *April*
next coming; In which case divers
and sundry Writs are to be di-
rected forth under our great Seal of
England, as well for the Prelates,
Bishops, and Nobility of this our
Realm, as also for the Election of
Knights, Citizens, and Burgesse
C 3 of

of the several Counties, Cities, and Borough-Towns of the same to be present at the said *Parliament*, at the day and place aforesaid.

Wherefore we will and command you forthwith upon the Receipt hereof, and by Warrant of the same, to cause such and so many Writs to be made and sealed under Our great Seal for the accomplishment of the same, as in like Cases hath been heretofore used and accustomed: And this Bill signed with our hand, shall be as well unto you, as to every such Clark and Clarks, as shall make, or passe the same, a sufficient Warrant in that behalf. Given, &c.

The Warrant is generall, and directs not the Lord Chancellor unto whom he shall direct the Writs of Summons, nor to omit any that were summoned the Parliament before. And yet it is apparent that many Lords (though living) have been omitted, and that the Father who hath been often summoned in his life time, being dead, his son
nor

nor none of his posterity have ever been after summoned.

This gives more occasion to shew what right the Nobility have had to be summoned, and upon what occasions they have been omitted.

First for their Right, the King at this day inserts into the patent of creation of a Baron, that he should be summoned to Parliament, so that the question doth rest only upon those Barons who had no patent of Creation; for the Earles had Charters, and no doubt was ever made of them. The doubt ariseth out of this, that divers Lords have been called by Writs, the onely thing left us recorded to know them; for anciently they had no Patents, and yet their sons and posterity wholly omitted, for it may seem it rests meerly in the Kings will to call them again, or wholly omit them, and that they had no right to be called by their Creation.

To satisfie this, let us consider of the creation of Earls (of whom there was no doubt) and of the creation of Barons.

It cannot be denied, but that Earls were ever created by an actual Ceremony, and that anciently they had no Charter.

Mandevile Earl of *Effex* being the first that had any (as the common opinion is) there being none extant before his time; now the question is, whither the honour passe by creation without the Charter, or no, as I suppose it did, and that the Charter was to convey the Jurisdiction anciently, and of latter times, the third penny of the County, rather then for the honour; and for this cause happily divers Earls used to renew their Charters at the change of the Prince, not to renew their honour, but to confirm the grant of the Jurisdiction, or third penny of the County from the Crown; wherefore I may affirm that the ceremony of Investiture, &c. created the Earl, and the Charter of the Earldom.

Earls that renewed their Charters.

Mandeville Earl of *Essex* created by K. *Stephen*; his Charter was granted him again by *Mawd* the Empress, and a Charter was granted him again by her sonne *Hen. 2.*

Milo Earl of *Hereford* created by *Mawd* the Emperesse, and his Charter was granted to him again by her son King *H. 2.*

These are extant with Sir *Robert Cotten*, Anno 1626. And if Charters had been usually enrolled in those times, when the Jurisdiction of the County was granted unto the Earl; We should have had many more presidents.

Of the creation of Barons, I know there are divers opinions, viz.

1. *That they are Barons by Creation.*

2. *Barons by Writ.*

3. *Barons by Tenure.*

The two latter are erroneous.

T *Ducbing* Barons by creation, I do here intend those onely who have had no patent (as now they have) but were anciently created by an actual Ceremony, even as Earls anciently were.

No ancient Record can be produced that any degree of honour did passe (no not among the barbarous Nations) without actual ceremony. Knighthood did ever require it, which is the lowest. And therefore I cannot conceive, but that the ancient Barons were created first before they had their Writs, and then having once been called by Writ, they had as good right for them and their posterity to be summoned ever after as the Earls had, so they kept their land.

To prove that Barons were created by ceremony, examine the Patents of 11 R. 2. to the Lord *John Beauchamp of Holt*, which some Antiquaries affirme to be the first Patent of the creation of a Baron: the words
are

are (*Ipsum Johannem in unum Parium & Baronum Regni nostri Anglia prefecimus*) volentes quod idem Johannes, & hered. masculi de corpore suo exeuntes statum Baronis obtineant, ac domini de Beauchamp & Barones de Kiddermaster nuncupentur: In cuius rei testimonium, &c.

Teste Rege apud Westminst. 10 die Octob. It is strange to me that any should think that this Patent should create the Lord Beauchamp a Baron.

It wants the very words of Creation, it saith (*Prefecimus*) we have created, and not *per presentes prefecimus*, we do now create him: so that out of all doubt he was created before, and the King by this Patent onely limitted the honour to his heirs Males as H. 6 did in the first Writ of Summons to Bromflet, Baron of Vessy, Anno 27 H. 6. Clause.

But if Beauchamp were created before this Patent, the question is how he was created. I answer, neither by Patent nor by Writ: For the Patent is dated the 10th of October, and created him not: And his
first

first Writ was in *December* following, which is a good conclusion in my opinion, that he was created a Baron by Investiture of Robes before he had either patent or Writ.

Barons by Writ.

HOW can it be imagined that a Writ can create a Baron. The ground alledged for it is the great slaughter of the Rebellious Barons at the battle of *Evesham*, *Anno. 49 H. 3.* And that therefore others were suddenly created by Writ to convict the remainder of those Rebels: the foundation of this errour is built upon a false ground. For that Parliament of *49 H. 3.* was summoned before the battle of *Evesham*;

To consider the deliverance of the Kings eldest son who was then a prisoner: and *Mountford* Earl of *Leicester* (chief Rebel) had his summons also, and divers others who were slain at that Battail on his part.

If the Writ without Investiture of Robes did enoble the party, then were:

were all the Judges, the Kings Sergeants at Law, divers Deans, and Arch-Deacons (being Treasurers or Keepers of the Privy Seal) or otherwise of the Kings Council, enobled in divers Parliaments of *Edw. 1.* almost in all Parliaments of *Edw. 2.* and many of *Edw. 3.* For they had then one and the self-same Writ as the Earls and Barons had. The Kings two Escheators have had the same Writ, *Annis 12. & 14. Edw. 2.* I grant that divers have been called by Writ, and had the same VVrit the Barons had, yea, and were ranked in the Close Rolls (by the Chancery Clerk) above divers ancient Barons, and afterwards omitted: But I deny that such were Barons, they were but *Peers*: For such men anciently also summoned to Parliament, amongst the rest, I will cite one, (*viz.*) *Monuthermer*, who having married the VVidow of the Earl of *Gloucester*, and having a great part of the Earldom as her joynture, was summoned as an Earl during the minority of her son by *Ed. 1.* And when the son came to Age;

Age, *Monuthermer* was summoned as a Baron, but his son and posterity omitted.

It may be objected, how these Peers could be discerned from the Barons, their Writs being all one?

I answer, by their manner of appearance; for the Barons appeared in their Robes, such as they had at their creation; the Peers did not, for they had none (or such as were far different from the Barons a Robes,) Surely no, for it had been disgrace to him afterwards to appear in Barons Robes, when he came but as Baron. It plainly appears that he was summoned *Ratione tenuræ tantum & non nobilitatis* Ergo, and so had no Robes.

Of Peers.

AS touching the opinion that the Father being summoned, his person was enobled; and if his Son be also summoned, his blood is enobled: I have observed, that 3. discents have been summoned, and yet were no Barons (*viz.*) *Anno 49 H. 3.* *Rados.*

Rados de Camois was summoned, and ranked in the Roll above all Barons, and *Ralph Camois* his son was summoned, *An. 7 E. 2:* And yet *7 R. 2. Claus. membr. 32. dorso.* *Tho. Camois* the Grand child being chosen one of the Knights for *Surrey*, was discharged by the Kings VVrit, *Quia ipse, & quam plures Antecessores sui Banneretti fuerint.* And *K. Richard* the second summoned him to that very Parliament of *Anno 7.* and he was summoned ever after during his life.

I doubt not but the Heralds will affirme that *Ralph Camois* the Father and Son, yea, and this *Thomas Camois* were Barons: But how will they then answer the Record of *7 R. 2.* who saith they were *Bannerets*, a Title given to the Peers of that age, as that of *Milites* was in the time of *E. 1.* And Tenants in *Capite* in the time of King *John* (as shall be shewed hereafter) if they can prove that *Thomas Camois* enjoyed the precedency of place which his Grandfather had; *Anno 49 H. 3.* I am satisfied; till then I con-

conceive, leaving others to their own better judgements, that *Camoy*s was called to Parliament 3. discents, yet not being created a Baron by Investiture of Robes, but onely called by VVrit; he was but called a Barons Peer, and no Baron. And it seems to me that those Claims of priviledge not to be impannelled of a Jury which occurre in our Year-books, were made by Peers, and not by Barons; For the tryal was by Record, whether summoned or not, and not by the Heralds for their Creation: For it is impossible but a Sheriffe of a County should know a Baron of the same Shire by creation (if he were the first,) his appearance in the *Parliament* in Robes, and the Hatchments at his Fathers Funeral, if it descended unto him, would be so notorious, as the Sheriff of the same Shire could not so mistake, as to impannell him of a Jury, and the Bailiff dwelling in the same, hindered to warn him to appear.

I know that the word *Peers* in two *Parliaments* of 15 E. 2. did signifie

signifie the Lords Spirituall, and Temporall, and all that had voyce in *Parliament* according to the signification of the word. And in the 4 E. 3. all that were to be tryed by *Peers* 9. the Temporall Lords onely: but in all the ancient Statutes (penned by the Judges, and the Kings Serjeants) the Earls and Barons are so named, or else *Magnates*. And this word *Peers* is not found in any of them, save in those of 15 E 2. Touching the banishment of the *Spencers*, whether did any of those Lords who were impannelled of a Jury, challenge the name or title of a Baron, *Vide Brooks Abridgement. Tit. Challenge, N. 18.*

The Cause alledged is, for that he was Banneret & Lord of *Parliament*, and had place there, and so ought not to be of a Jury.

And may it not be that he who was summoned to the *Parliament* as a Baron, during his life, also had voyce in *Parliament*, why not privileged out of a *Parliament*, why may not so much be granted unto him as to a Banneret, not to be chosen Knight

Knight of the Shire? the Banneret might be summoned to the upper House, and therefore (in my opinion) ought not to serve in the lower House? why not the other priviledge upon the same reason? The very tryall upon such *Challenges* was whether summoned or not.

Not whether a Baron, or no Baron, which satisfies me, that they were no Barons, but Peers, and being summoned, had the priviledges of Barons, both for that, and to be tryed by Peers, but were not so honourable.

Here may be a doubt, whether the Barons and Peers took place in the *Parliament-House*, as they were ranked in the Lists of Summons, then did *Richardus de Camoys*, being but a *Peer*, take place, *Anno 49 H. 3.* above all *Barons*: and so *Thomas Camoys* the Grandchild was ranked, *Anno 17 R. 2.* and after for divers *Parliaments* above all *Barons*. If you peruse those ancient Summons, you shall not find any one of them ranked aright.

Vide

Vide Anno 12 E. 3. where *Thomas* Earl of *Norfolke*, Marshall of *England*, and the Kings Uncle, and the Earl of *Gloucester*, and *Angus*, are placed in the middle of the *Barons*, and the Lord *Stafford*, an ancient *Baron* ranked lowest save one.

Vide Anno 12 Ed. 3. where *Eustachius de Hatch*, *John de Havering*, and *Henry de Pinkney* and others are ranked before *Henry* Earl of *Lancasters* son and the Kings Nephew. *Vide 1 H. 6.* where the Earl Marshall, the Earl of *March*, the Duke of *Exon*, and the Earl *Warren*, are ranked after divers *Barons*. *Anno 3 H. 6.* *Humphrey* Duke of *Gloucester*, the Kings Uncle, and the Earl Marshall, are ranked together lowest of the *Barons*, save one: *Vide Consimil. Annis 13 E. 3. 20 H. 6.*

Neither shall you find the Lords placed alike in any two Summons. And the said *Thomas de Camoys* in divers *Parliaments* before 17 *R. 2*: And in all *Parliaments* after 3 *H. 4*. was ranked sometimes the lowest, and

and sometimes neer the lowest of all the Lords.

To prove that Peers were summoned as well as Earls, and Barons, *Vide* the ancient Manuscript of *Modus tenendi Parliamentum Cap. de Laicis summoneri debent omnes & iunguli Comites, Barones & eorum pares.*

Et vide Chartam Johannis R. in Matthew Paris, page. 247. Whereafter the summons of the Archbishops, Bishops, Earls and Barons, *Majores Item summoneri faciemus, &c. Omnes alios qui in Capite tenent de nobis, &c.* It sets not down the quantity of their tenure, but it is expressed in that other ancient Manuscript to be 13. Knights fees for a Barons Peer, and 20 Knights fees for an Earls Peer.

Et vide Rotul. Claus. Anno 27 E. 3. after the Writs of the Earls; *Consimile litteræ diriguntur Baronibus & Militibus subscriptis, &c. Vide,* a List of the names of such as were beheaded with the Earl of Lancaster at Boroughbride, Anno 15 E. 2. where many who were formerly

formerly summoned to Parliament as Lords are named Bannerets, prout Sir Henry Tyes, Sir John Gifford, Sir Bartholomew de Badlesmere, Sir John Mowbray, &c.

Vide Etiam, Summons to Thomas de Bradeston, An. Ed. 3. who was a Banneret, as appears by the Patent, An. E. 3. & Ralphes Camoys the Father and son were summoned, Annis H. 3. E. 2. and E. 3. And yet An. 7 R. 2. Clause 32. the Record saith, that Thomas Camoys, & very many of his Ancestors were Bannerets, & therefore he was exempted from being Knight of the Shire, happily for that the King might summon him to Parliament, as he did his Ancestor Ra'ph Camoys.

Vide Etiam, the Parliament Roll, Anno 18 Ed. 3. n. 35. The Cause of Summons was declared in the presence of the King, and divers Lords there named (*& autres Barones & Bannerettes Chevalers de Comites*) Citizens & Burgeis summons audit Parliament.

E. Anno 46 E. 3. n. 7. The Parliament Roll, the Dukes, Earls, Barons, and Bannerets, and in divers Parliaments

liament Rolls of *E. 3.* often occurs by the Prelats, Earls, Barons, and other Grandees.

Anno 30 E. 3. n°. 8. the Earls and Barons being in Parliament, have granted for themselves, and for the Peers of the Land which hold by Barony the tenth Fleece, &c. In this Parliament the Commons granted a Subsidie by themselves, and the Lords granted another by themselves, amongst whom were reckoned their Peers. *Anno 17 E. 3. n°. 6. Per les Comites Barones, & autres Nobles,* these *autres Grandes,* and *autres Nobles,* could be none other then the Peers, all other degrees of honour being named.

These reasons give me satisfaction that Peers were summoned in the times of *H. 3. E. 1. E. 2. E. 3.* and *R. 2. &c.* as well as Barons, and they and their posterity omitted *ad Libitum Regis*; and divers painfull Antiquaries observing this Omission, and not knowing that they were but Peers, have been firm of opinion, that the Writ did create

a Baron, but it was (*ad libitum Regis*) to call his sonne, or to omit his whole posterity.

Of Barons by Tenure.

T Ouching the third kind of Barons by Tenure, it is erroneous as that by VVrit.

I have perused all the Precedents that are alleadged for it, and they are of the Lands conveyed by the Kings License to the Heir-Male, or the second sonne of the Ancestor that was created by VVrit, (the same may be said of an Earldome also:) For the Lord *Matrevers* being Heir-Male, and having the Castle of *Arundel* by Intayle, was adjudged in Parliament, *Anno 11 H.6.* to be Earl of *Arundel* by force of the Entayl.

Amongst the other Presidents may be added one of our time, of *Edward Nevill* Heir-Male to the Lord *Abergavenny*, having the Land entailed on him, and the King summoning him by VVrit, his Lordship took his ancient place: For the Ancestors being created by the Ceremony of Investiture, the same
needs

needs not to be renewed in any of his posterity, there the VVrit alone is sufficient; for such honour is inheritable, and hath been disposed of with the Land, which is a good proof of the Barons right to come to Parl. (whereof more hereafter) but not that Land made honour, or carryed the honour; For they can alledg no president of a meer stranger in blood, and purchaser of the Lands of a Barony, though with the Kings licence, otherwise the sale of no Land held in *Capité*, as all Baronies are, can be good against the King) have by vertue of the Land been called to Parliament, onely one comes near it.

That is of the Barony of *Lati-mer* of *Danby*, whose Daughter and Heir being married unto *John* Lord *Nevill*, and he called by VVrit in her Right, and had issue by her, *John*, and *Elizabeth*; *John* the son dyed without issue, having first sold the Lordship of *Danby*, unto *George Nevill* the son of *Ralph*, the son of the said *John* the Father, by his first wife; And afterwards the
Heir

Heir generall making no claim unto the honor, the said *George Nevill* was summoned by *H. 6.* to the Parliament.

But *Brook* Lord *Willoughby* the Heir general petitioned *H. 7.* for the said Honor, and in my opinion, (had it not been for his Ancestors non claim, together with *Nevills* possession, *iiij.* descents) he shewed the best right for it.

But if you please to peruse the Inquisitions *post mortem*, remaining in the *Tower*, you shall find very much Land held *per Baroniam*, even in ancient times in the hands of private Men, who were not then reputed Barons.

So that I am satisfied that no Barons have been summoned to *Parliament*, *Ratione tenura*) onely Peers have.

It resteth to speak of the Omissions in the Summoners (*viz.*) of the temporal Lords of Parliament, not of the Clergy (who never lost their Right) nor of the Peers who had none but for life, save *ad Libertum Regis*.

D

If

If the Bishop were dead, and the See void, yet summons were directed, *Custodi spiritualitatis Archiepatus Cantuariensis, sede vacante, &c. An. 7. E. 3. & alibi.*

If the Bishop were beyond the Seas, yet Summons were directed to him, *prout Anno xiii. E. 3. R. Dunelm. Episcopo vel ejus vicario generali, ipso Episcopo in Remotis agente, & alibi.*

The Reason is, they are *Premunire Clericum, &c.*

So that Bishops dead or alive, are ever summoned, *Ratione Episcopalis dignitatis & tenuræ*, And can the same writ be denyed unto Earls and Barons? surely no, the Parliament is (*Commune Consilium*) the whole Land hath interest therein, the Commons appear there by their generall Procurators, (the Knights, Citizens, and Burgessees,) and the Lords in person, or by their particular Procurators, and the presence of the Lords and Commons is so necessary, that no Law can be made or revoked without them.

If a Peer was summoned, he was not omitted during his life, As appears by all summons, for the King would not dishonor him whom he had honoured.

The same Right which a Peer had for life, a Baron had of Inheritance; the very Creation by Investiture of Roabs made it Inheritable, even to the Heirs general; otherwise what needeth *Richard. 2. An. 11.* to limit by his Letters Patents before the first writ of summons the baronage of *Kiderminster* to the Heirs Males of the Lord *Beuchamp* of *Holt*, who was created by Investiture of Roabs (as I have shewed before) or *H. 6. An. 27.* to limit by the first writ of summons the baronage of *Wessey*, unto the Heirs Males of the Lord *Bromflet*.

I do not affirm that the Husband or son of an Heir Female ought to be called to Parliament, but they have usually been called to Parliament; And if such Husband after that he hath issue Male, or such son after the barony is descended on him be called, before they have

no right, they took place according to the antiquity of their ancestors, and were not new created, which shews is the honor is Inheritable.

Nay, if the chief Seat had been conveyed to the Heire Male, and he summoned to Parliament, he took place according to the antiquity of the barony.

And as the barons honor is Inheritable, so their comming to Parliament hath ever been reckoned an essential point of Inheritable honor, as given them by the King at their first Creation (though not mentioned as now in their late Charters) And to deny that unto any one, that is due unto them all is to dishonour him whom the Majesty of a King hath formerly honoured, whereof our Kings have ever been very Religious; witness the president of *Roger de Quincye*, second Son to *Sayr* Earl of *Winchester*, whom *H. 3.* summoned to the Parliament, supposing that *Robert* his Elder brother (then in the holy Land) had been dead, and would
not

not afterwards displace him, when his eldest brother returned, and petitioned for his right, because he had been lawfully summoned to parliament, and there, and in other places had been void, whereby (saith the precedent) the title of honour was settled, as inheritance in him; it was unjust, but yet to preserve the honour which the King had given.

There is another pleasing precedent of *Mounthermer*, whom *E. 1.* called to parliament, as Earl of *Gloucester*, for that he had married the widow, and had a great part of the Land, & when *Gilbert* the Heir came to Age, and petitioned for his Right, *Ed. 2.* granted it, yet summoned *Mounthermer* ever after as a baron; so unwilling the King was to dishonour him. Out of these precedents and my observation of all the summons in general which I have carefully perused, it appears plainly to me, that the Lords have a double Right to be summoned to the parliament; one gotten by long continuance and use, and another

given by the King with their honour at their creation ; (neither can *I* find) having made diligent search that any Baron hath been omitted, if he were of full age, stood (*Reatus in Curia*) and were within the Land, unlesse he had so diminished his Revenews, as that he could not maintain the state of his honour, whereof there are some few unpleasing precedents, but such cannot be produced of any Earl, for at his creation the King gave him for his Maintenance, the third penny of the County, which could not be aliened.

To proceed in the Commissions.

EArls and Barons have been usually omitted, if they have been out of the Land, *prout.*

An 10. E. 3. 9th. Summons
were directed to (*viz.*)

*Robert de Ufford, Com. Suff.
Gilberto de Umfrevil
Com. de Angus.
Ranulpho de Dacre.*

Bartho.

Bartho. de Burghersh.

Joh. de Seagrave.

Egideo de Badlesmere.

Rado de Nevil.

Joh. de Tiptoft.

Rico. Talbot.

Henrico de Percy.

Rado de Stafford.

Thome de Berkeley.

Antonio de Lucey.

Et Memorandum quod brevia istis Magnatibus immeditate præscriptis directæ essent. ad Parliamentum prædictum remissa fuerunt Cancellar. Regis, pro eo quod quidam ex iis in partibus Scotiæ, & quidam ex eis in partibus transmarinis in obsequio Regis existant ad nullanda; Anno 46. E. 3. and in divers years of H. 5. Few Earls and Barons were summoned, the King then being in his French Warres, And such omission was thought to be no disparagement to their honour.

But now since the opinion, that Omission to be summoned did lose their Right hath been broached by the not discerning of Peers from

Barons ; every Lord is carefull to be summoned, though he know he cannot appear, being beyond the Seas. As when the Lord Mountjoye was Deputy in *Ireland*, Anno 43. *Eliz.* he had his VVrit, and sent his Proxie.

Others have been omitted because they did not stand *Rectus in Curia*, either their title was *Litigicus*, as was the Earl of *Arundels*, Anno 11. *H. 6.* And the late Lord of *Abergavenneyes* ; or they were restrained of their liberty, being in the Kings displeasure, as was the Earl of *Northumberland*, Anno. xviii. *Jacobi*, For then the VVrit of summons is an Enlargement by Law as was resolved by the Judges.

But I do not find any ancient precedent that any had their Writs denyed them, for that they were in the Kings displeasure onely.

For Anno 15. *E. 3.* the King was highly displeased with the Arch-Bishop of *Canterbury*, yet he had his Writ, and came to Parliament, and humbled himself unto the King, desiring to be tryed by his Peers.

It

It is true, this Arch Bishop was at the first denyed his Entrance into the Parliament House, yet at the Intercession of the Lords, he was admitted; *Vide plus de Antiquitate Ecclesie Britannia, & Goodwin in vita sanct. Archiepiscop.*

Anno 5. H. 4. the Earl of Northumberland was summoned to the Parliament, to be held at Coventry 28. December, Notwithstanding he was suspected to be privy to the treason of *Hottspur* his son.

This Parliament was prorogued Cra. Hill. at Westminster, & the prorogations being then by new Writs, the Earl of Northumberland had none, yet he came to Parliament, exhibited his petition, wherein he acknowledged that he had done against his Allegiance, and namely for gathering of men, and giving of Liveries against the statute, was tryed by his Peers, who adjudged his action to be neither Felony, nor Treason, but onely a trespassse finable to the King, which the King pardoned. Now of late they which are in the Kings displeasure, have

D 5

had.

had their summons, but with a Letter from the Lord Chancellour, or Lord Keeper (not to come out, but) to send a Proxie.

But in the Parliament of the 6. of *February*, *Anno Caroli Rs.* the Earl of *Bristol* being denyed his Writ, petitioned the Parliament for it, then he had his Writ without any intercession of the Parliament Lords: But withall, a Letter from the Lord Keeper signifying his Majesties pleasure, that he forbear to come, and send his Proxy; whereupon the Earl petitions the Parliament again, shewing that that letter could not discharged him from coming, the Writ commanding him to come upon his Allegiance: but this point was not then decided, for the Earl was presently sent for as a *Delinquent*, and charged with Treason; *Omission. ratione Minoritatis*, there be many presidents for it, as of young *Gilbert de Clare*, Earl of *Gloucester*, in the last year of *E. 1.* But the King hath sent his Writ of Summons unto such, before they were fully *xxi.* being of years of discretion,

cretion, as the Lord *de la Ware*, Anno 20. *Jacobi*.

Anno 3. H. 6. *John Lord Roos*, being then under age, is named to be present in Parliament amongst other Lords, n^o 10. but his summons are not entred.

Anno 11. H. 6. All the Lords are sworn to the statute of Retainers, made Anno 8 H. 6. and there it appears that the Duke of *Norfolke*, and the Earl of *Devonshire* (though under age) were in Parliament in their places, and did take the said Oath, n^o 15. yet neither of their summons, were entered.

As the King hath not used to omit any Lord that hath been within the Land (*Rectus in Curia*) & of full age, so none have used to come to Parliament, until he had received his VVrit of summons: But in such case he may send to the Lord Chancellor for his VVrit, as the Earl *Marshall* delivered his opinion in the case between *Nevill*, and *Fane*, Anno *Eliz*. The reason may be for that the Lord Chancellors warrants are general, *Vide the Journall book,*

book, *Anno* xxixth of *Elizabeth*, the Parliament began the 24th. of *October*, and the Earl of *Essex* came not, for that he received not his Writ (through the negligence of the Messenger) saith the Journal, until the xvij. of *November*, His Lordship was then sick, and appeared not until the 11th. of *January* following.

And in the Parliament of the xvij. *Jacobi*, the old Earl of *Hertford* dyed, and his Grandchild and Heir came not to the Parliament, because he had not received his Writ.

To the great Councell.

Although the Kings of *England* have not omitted the Earls and Barons in the Summons of Parliament, unlesse for the causes aforesaid, yet they have usually omitted divers of them in the Summons to the great Council, prout in the Summons, *Anno* 9. E. 3. xxij. *February*, the King summoned but five Earls, and Eleven Barons. *Anno*

Anno 15. E. 3. 12. January, there were summoned but xxvi. of all sorts.

Anno 16. E. 3. 12. September, & eodem Anno, 20. November, were summoned but a very few. And 21. E. 3. there were summoned xxij. of all sorts.

Anno. 45. E. 3. there were summoned but xiiij. Earls and Barons, and so in divers years of E. 3.

Neither did E. 2. summon them all.

After E. 3. the summons to the great council were under the privy seal, the reason may be of this omission (for that the same not being (*Commune Consilium*) as the Parliament is, The Chancellour was appointed whom he should summon, and had not a general warrant, *prout An. 15. E. 3. the 12 Junij*, the Writs being sealed of that date, others were made, and this Note under-written, *viz. Mandamus quod ipsa brevia consignata fuerunt, 3. die Julij.*

Vide with Sir Robert Cottons Warrants for Summons to the great Council, *An. 26. and 28 H. 6.*

H. 6. on this manner. First, the form of the Writ, then the names of such Lords who were to be summoned, and underneath thus :

Rex de Avisamento Consilij voluit & Mandavit custodi privati sigilli sui quod literas separales sub eodem sigillo faceret dominis predictis dirigendas in forma predicta.

Signed by the Clerk
Tho: Kent.

There rests yet one doubt to be satisfied (*viz.*) the Kings Warrant to the Chancellor being general, how came it to passe that the Summons of Peers were omitted?

I answer, the words of the Warrant are to make such Writs as are usuall, and the use was to omit the summons of Peers without special direction from the King.

Of Omission of summoning of the Husband of an Heire Female.

Where the Barony discends unto an Heir Female, the husband of such an Heir hath been omitted untill he hath had Issue Male by her, and be admitted upon his Petition of Grace unto the King, *quia*, the use hath been so; yet being admitted & summoned, he taketh place according to the antiquity of that Barony. I speak of Barons by Creation of Investiture and Writ onely, without any Patent. And this shews plainly that a Baron so created and summoned, his honour is inheritable.

It may be objected, That some Baronies discended unto an Heir Female, and her Husband and posterity ever after omitted. And some Baronies have discended unto two Sisters or more, and the husband of the elder sister wholly omitted, and the younger husband summoned; 1^o such honour is not inheritable but during the life of the Issue male.

I answ. This may happen upon divers occasions: for 1^o besides the discent of honour, a certain number of Knights Fees ought to discent also for the maintenance thereof.

Secondly, the Husband cannot be summoned *de jure*, untill he hath Issue Male, and petitioned for it.

Thirdly, If the Husband neglect his Petition, the Issue Male is to make his Claim by Petition to the King.

If any of these fail, the Omision is just; and yet the honour is inheritable to the heir female, otherwise how could Sir *Humphrey Bowcher*, who marryed the younger daughter of the Lord *Cromwell* be admitted unto the ancient place of that Barony.

*The forme of the severall Writs of
Summons at this day.*

Anno 18 Jacobi.

Jacobus Dei Gratia, Anglia, Scotia, Francia, & Hibernia Rex,
fidei Defensor, &c. Praclarissimo
filio

filio nostro Carolo, natu secund. modo
Unico & Primogenito, Principi
Wallie, Duci Cornubie & Ebor.
& Comiti Cestrie salutem. quia de
Avisamento & assensu consilij nostri
pro quibsd. arduis Negotiis, Nos,
statim, defensionem Regni nostri An-
glie & Ecclesie Anglicane concernent.
quoddam Parliamentum nostrum apud
civitatem nostram Westminster sex-
to decimo die Januarij prox. futur.
teneri ordinamus, & ibidem cum vobis
ac cum Prelatis, Magnatibus, &
Proceribus dict. Regni nostri colloq.
habere & tractatum: vobis in fide &
legiantia quibus nobis tenemini firmi-
ter Injungendo Mandamus, quod
consideratis dictor. negotiorum ar-
duitate, & periculis imminentib. ces-
sante excusatione quacunque dict. die
& loco personaliter interitis nobisc.
& compralatis, Magnatibus, & pre-
ceribus predict. super dictis negotiis
tractat. vestrumq. consil. impensur,
& hoc sicut nos & honorem nostrum,
ac salvatione & defensionem Regni no-
stri & Ecclesie predict. expeditio-
nemq; dictor. negotior. diligitis
nullatenus omittatis. T: meipso apud
Westminst.

Westminst. 13 die Novemb. Anno Regni nostri Anglia, Francie, & Hibernia Decimo octavo, & Scotia quinquages. quarto.

Anno 14. Jac. &c. Jacob. dei gratia Angl. &c. Præcharissimo Consanguineo suo Georgio Marchioni Buckingham. magn. Admiral. Anglie salutem Quia de Avisamento, &c.

Jacobus dei gratia, &c. Charissimo Consanguineo Carolo Comiti Nottingham. salutem, quia de Avisamento, &c.

Jacob. dei gratia, prædilect. & fidei nostro Lionello Cranfield Chr. Summo. Thesaurar. nostro Anglia: cum nuper de avisamento, & assensu consilij nostri, pro quibusd. arduis & urgentib. Negotijs, nos, statum & defensionem Regni nostri Angl. & Ecclesie Anglican. concernent. præsens parliamen. nostrum apud civitatem nostram Westminst. sexto decimo die Januarij Ultimo præterito teneri Ordinavim. & ibid. cum Prelatis, Magnatib. & procerib. dict. Regni nostri colloqu. haber. & tractat. vol. sub fide & legiantia quibus nobis tenemini firmiter Injungendo Mandamus, quod
consi-

consideratis dictor. negotior. Arduitate & periculis imminentib. Cessante excusatione quacumq; quarto decimo die instantis mensis Novem. ad presens Parl. nostrum personaliter interitis, &c.

R. predilect. & fideli nost. Edwardo Mountagne de Broughton Chr. salutem consimile.

Jacob. dei grat. &c. Henrico Grey de Groby Chr. salutem. quia de Avisamento & assensu, &c. Anno 18 Jacobi.

R. predilect. & fideli suo Francisco Russell Bar. de le Thornhough Chr. salutem, An. 20 Jacobi.

Jacob. dei gratia, &c. Reverendissimo in Christo patri Tobia Archiepisc. Eborum Anglia Primat. & Metropolitano salut. quia de Avisamento & assensu consilij nostri pro quibusdam arduis & urgentibus negotijs, nos, statum, & defensionem Regni nostri Anglia & Ecclesie Anglicane concernent. quoddam Parliamentum nostrum apud Civitatem nostr. &c.

Jacob. dei gratia, &c. Reverendissimo in Christo patri Jo: Episc. Sarum salutem. &c. cum nuper de Avisamento, &c.

The

The Form of the ancient VVrit for
the Election of the Knights,
Citizens and Burgesſes.

R *Ex Vicecomiti Eborum salutem.*
Quia propter quadam Magn.
& Ardua Negotia nos & ducatum
noſtrum Aquitania ac alias terras
noſtras in partibus tranſmarinis pro
quibus ad eaſdem partes nuper ſolem-
nes Nuncios noſtros deſtinaverimus,
contingentiaq; in ultimo parliam. no-
ſtro a quibus certis cauſis terminari
non potuerint, Parliament. noſtrum
apud VVeſtminiſt. Die Lune in Craſt.
quindena Paſcha prox. futur. tenere,
& cum praelatis Magnatib. & prece-
rib. dicti noſt. Regni ordinavimus ha-
bere colloq; & tractat. tibi precipimus,
firmiter Injungenſes quod de dicto
Com. duos Milites & de qualib. civi-
tate Com. illius duos cives, & de qua-
libet Burgo. duos Burgenſes, de diſ-
cretioribus & ad laborandum poten-
tiorib. eligi, & eos ad dictum diem &
locum venire faciat. Ita quod Mi-
lites plenam et ſufficientem poteſtat. per
ſe & communitat. com. predict. & dicti
Cives

Cives et Burghenses pro se et communitat. civitat. et Burghorum divisim, ab ipsis habeant, ad faciend. et consentiend. iis que tunc de communi consilio (favente deo) ordinari contigerint super negotiis ante dictis. Ita quod pro defect. huiusmodi potestatis dicta negotia ineffecta non remaneant quovis modo, et Habeas ibid. nomina predictorum Militum Civium, et Burghensium, et hoc breve, et hoc sicut nos & honorem nostrum & tranquillitatem et quietem dicti Regni diligitis, nullatenus omitatis, &c. T. Anno 5 E. 3. 17 Feb. per ipsum Regem.

I have recited this Writ at large, as it may appear, that the Writ for the Commons was sometimes speciall, declaring the cause of Summons, as well as the summons to the Lords, therein the Writs did agree; but the Commons had not any power of themselves, but from the County, City, or Borough that sent them.

The like Writ was sent, *Constabulario Dover et custodi quinque Portuum* for the election of two Barons out of every port, &c.

Anno

Anno 49 H. 3. A Writ went to every Sheriff to cause two Knights to be chosen out of every County.

And other Writs went to each City and Borough Town, not to the Mayor, or Bayliff, but *Civibus et Burgiensibus*, to send two citizens, &c.

Another Writ went *Baronibus et probis hominibus quinq; portuum*

It is worth the labour to search when, and upon what occasions the Writs altered.

Additions to the ancient Writ of Summons.

A Nno 14 E. 3. 25. Augusti. The Writ of Election agreed with that of 5 Ed. 3.

But when the Commons gave their answer touching the Subsidie demanded for the Wars, they desired leave to return into the Countrey to confer with their Neighbours, promising their endeavours for the same at the next Parliament: And withall, desired that the Writ to the Sheriffs for Election of the Knights might have this Clause, viz.

Quæ deux miltz valuez Chivalers de Countez soient Esleuz et Envoiez ad prochein

prochein Parliament pur la commune, si que nul de eux ne soit Viscount ne autre Minister, n. 8.

Which was thus far agreed on, viz. *Summons du dit Parliament directz au Viscounts y deux Chivalers Ceynct des Espees de Chescun, Countie soient esleuz pur estre en Mesme le Parl. n. 22.*

And thereupon the next Writ had this Clause (*viz.*) *Tibi precipimus quod de dicto Comitatu duos Milites gladiis cinctos, &c.* which continues to this day.

Anno 46 E. 3. An Ordinance was made, that neither Lawyers nor Sheriffs should be returned Knights of the Shire, but Knights of the best worth in the County be returned, and chosen in full County, yet the Writ received an addition touching the Sheriffs only, which continues unto thisday, viz.

Nolumus autem quod tu, nec aliquis alius Vicecomes, &c. *Anno 1 H. 4. 25. Aug.* the Writ had this Clause, (*viz.*)

Nolumus autem quod seu aliquis alius Vicecomes Regni nostri predicti, aut apprentitius, seu aliquis alius ho-

no ad legem aliquam sit electus,
&c.

Whence it was called (meerly) the Lay-mans Parliament: *Anno 7. & 8 H. 4. no. 139.* It was enacted by the Petition of the Commons, that Proclamation be first made in the next County-Court after the Sheriffe hath received the Election to be made, &c. That the Election be in full County wherein they shall proceed freely, and indifferently, notwithstanding any prayer or commandment to the contrary.

The names of the Knights chosen whether present or absent, be set down in an Indenture under the seals of all men that did elect them.

And this Clause was added to the Writ, *viz. Et Electionem tuam in pleno Comitatu tuo scām distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerint, nobis in Cancellaria nostra ad diem & locum in brevi Contentum certifies indilate,*
No. 14.

Anno 11 H. 4. n. 39. At the Petition of the Commons it was enacted; That all Sheriffs that shall
make

make return contrary to the Stat. of 7 H. 4. the Knight so chosen shall lose his wages, N 59. Chap. 1.

Note, the Statute doth not say that the Return shall be void, and the Sheriffe upon a new Writ proceed to a new Election as the practice is now with the Commons.

Anno 1. H. 5. At the Petition of the Commons it was enacted; That none shall be chosen Knight, Citizen, or Burgeſſs, but shall be reſiant, and shall be chosen by such as are Reſiant also, N 2. Cap. 1.

An. 8 H. 6. It is likewise enacted; That none but Reſiants shall be chosen by Reſiants that can diſpend 40. s. per annum Freehold.

That the Sheriffe may examine the Free-holders upon Oath, how much he may diſpend by the year.

The Juſtices of Peace shall have power to enquire hereof.

If the Sheriffe be attainted for doing otherwise, he shall forfeit 100*l*. and be imprisoned.

And the Knights returned otherwise shall lose their wages. (*Nota*) It doth not say the Election shall be void.

And mention shall be made of this Ordinance in every Writ hereafter, *N^o. 39. Cap. 7. An. 10 H. 6. N^o 33.* the Statute of 8 *H. 6. cap. 7.* is confirmed, and explained, that the Election shall be by Resiants of 40*s. per ann.* Free-hold at the least, *Cap. 2.*

But mention is not made of the Ordinance *An. 8 H. 6.*

An. 23 H. 6. ca. 15. The Statute of the 1 *H. 5.* & 8 of *H. 6.* are confirmed and enacted. That the Sheriffe when he hath received the Writ shall direct a Precept under his Seal to the Mayor and Bayliffs of Cities and Boroughs.

That the Mayor and Baliffs return the said Precepts executed to the Sheriffs by the Indenture between them and the said Sheriff to be made.

And the Sheriff shall make return

of the Writ, and of the said Return of the Mayor, and Bayliffs upon pain contained in the Statute of the 8. of *H. 6. Cap. 7.* And moreover to pay to every Knight, Citizen, and Burgeses so chosen, and not returned by the Sheriff, 100*l.*

And if the Mayor and Bayliffs shall return others then are so chosen, they shall forfeit to the King 40*l.* and to the party chosen and not returned 40*l.*

Nota, It doth not say the Return shall be void.

And every Sheriff shall make due Elections of the Knights in full County between eight and nine in the forenoon without Collusion, and make true Returns upon pain to forfeit 100*l.* to the party that will sue for the same. Provided that if the Knights, Citizens, and Burgeses duely returned by the Sheriffe be afterwards put out, and another put in his place, take it upon him, he shall forfeit to the King 100*l.* and to the party so put out

another 100 l. provided it be sued for within 3. Moneths.

(Nota) It doth not say there shall be a new Election.

The Knights shall be notable Knights of the same County, or such Esquires or Gentlemen of the same County as are able to be Knights.

No man to be a Knight of the Shire which standeth in the degree of a Yeoman.

This is the best statute for the election of the Commons.

Who are not to be chosen.

A Nno 46. Ed. 3. no. 16. It was ordained by Parliament, that no Sheriff shall be returned nor accepted for Knights of the Shire, which Ordinance hath been constantly observed ever since; And by the same statute it was ordained also, that no Lawyers who solicited suites for other men, should be returned, or accepted for Knights of the

the Shires, but the King willeth that Knights, and Serjeants of the best esteem of the County be hereafter returned Knights in the Parliament.

Anno 23. H. 6. cap. 15. It is enacted that none shall be chosen Knight of the Shire, which standeth in the degree of a Yecoman.

Who are to be exempted (if they please) from serving in the house of Commons.

K Knights Bannerets (which name is somtimes given to the Peers) used not anciently to serve in the house *Commons*, for that the King might and did often summon such to the Parliament, as a Lord, Peer: and so his service was in the upper house.

That they were usually summoned, (it is declared before that they were exempted to serve in the house of *Commons*) appears by the Kings Writ, directed to the Sheriff of *Surrey*, for a new Election (in loco *Thoma Camoys, Chr. Banneret*)

neret) the reason is there set down,
*Nos animadvertentes quod huiusmodi
 Banneretti ante hac Tempora in Mi-
 litibus Comitatus. Ratione alicujus Par-
 liamenti minime consueverunt. 8. Oc-
 tober, Anno 7. R. 2. Claus. Membrum
 32. dorso.*

And R. 2. did afterwards sum-
 mon the said *Tho. Camoys* to Parl.

The Kings servants have had the
 same priviledge of Exemption.

This appears by the like Writ
 for a new Election, in the place of
James Barners, whom the King
 commanded to be discharged, *quia
 est de retinentia Regis, & familiaris
 & unus Militum camera Regis, ib.
 Anno 7. R. 2. 28 October.*

The Princes his servants, and the
 Queens servants, might claim the
 like priviledges.

And no doubt but they have had
 the like priviledges, as may be ga-
 thered out of another Writ of the
 same, the 7th year of R. 2. dated
 the 16. of Octob. for the discharge
 of *Thomas Morwell*: *Quia est de
 Retinentia, Charissima Domina &
 Matris nostr. Johanna Principissa
 Wab.*

Wallia, but this was in those ancient times, when men thought it a burthen to come and serve in Parliament: Even divers of the Lords themselves obtained licence to be absent, and not to serve during their lives. *Prout An. 1 E. 4. part 1^o Membrum 15 Rex concessit H. Bromfflet, Domino de Vessy quod ipse durante vita sit exoneratus de veniendo ad Parliament. & Consilia Regis, &c. Consimil. pro Domino Beauchamp, Anno 2 Ed. 4. par. 2. Membr. 10.*

And the Kings Tenants in ancient demesne ever enjoyed this privilege, *prout Fitzherbert, Tit. Parliamentum no. 99. & 101.*

But now they claim no such Exemption, neither do the Kings servants enjoy their ancient privileges therein, being now usually chosen for Knights, and Burgeses, ever since Cardinal *Woolsey* had the the great Seal; since which time the Commons enjoyed more privileges then they claimed before.

Yet there are precedents; that if any being first chosen into the

House of Commons, become afterwards the Kings servants, during the said Parliament, and summoned by writ to serve in the Upper House: that he ought to be remanded back again to the Commons House, *procur.*

Mr. *Ri. Ouslow* being of the lower House, *Anno 5 Eliz.* he was in the *interim*, made the Queens Solicitor, and by Writ called to serve in the Upper House: The Speaker also dyed in the *interim* the Commons petitioned for leave, to chuse a new Speaker, Mr. *Ouslow* being sent to them by two of the Upper House, I suppose by two of the Attendants, was chosen their Speaker, but the House was divided in opinion

Anno xviii. Eliz. Mr. Serjeant *Jeffery*, (being chosen Knight for *Sussex*) was in the *interim* of a prorogation, made the Queenes Serjeant, and called into the Upper House by Writ: resolved the 27. of *Febru.* that according to former precedents he ought to serve in the House of Commons.

Anno xxiii. Eliz. the House of Commons

Commons being met the xvj. of January, (unto which day the Parliament was prorogued) *Sir Robert Bell*, their late Speaker being dead, the Commons petitioned for leave to chuse a new Speaker, and receiving answer for the same in the Upper House: at their return Mr. Treasurer reported that he had seen a Member of their house with the Lords (*viz.*) Mr. *Popham*, who had served in the beginning of that Parliament as Burgesse of *Bristow*, and in the interim of the Prorogation was chosen the Queens sollicitor, and called by writ to the upper house, and moved that he might be remanded, which some thought not needful before he be chosen: (it should seem they knew he was to be chosen their Speaker) yet upon reading of the precedent of Mr. *Ouslow*, *Ann* 8. *Eliz.* the said Mr. Treasurer and others were sent up to the Lords to demand Mr. *Popham*; answered, that the Lords had resolved he should be sent down, the rather because he was a Member of the house of Commons, and

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they possess of him before he was solicitor, or had any place of attendance in the higher house.

And Mr. *Anderson* the Queens ferjeant at Law, and Sir *Gilbert Gerrard* the Queens Attorney general brought him to the house of Commons.

Here I have cited 3 precedents, you may easily see the reason why these were remanded, viz. The Queen had resolved to have them chosen Speakers, and not for that the Commons had any right otherwise to demand them. If *Bell* their Speaker had lived being made Lord chief Baron in the Interim of the prorogation, I doubt whether they would have remanded him or no; If it should hold for a rule that the King cannot summon a Member of the house of Commons unto the upper house, then those Lords who were Burgesses *Ann. 18. Jacobi, &c.* and created Barons in the Interim of the prorogation, viz. the Lord *Brook*, and *Cranfield* might have been demanded also; compare those 3 presidents of 7 R. 2. and note *volenti non fit injuria.*

CHAP. II.

Of Appearance.

IN the first Chapter was declared the severall Writs of *Summons*, and the diversity between *Peers* and *Barons*; and that anciently neither the Writ nor the Tenure created a Baron, but the Investiture of Robes onely; and the election of the Commons. This shews the manner of their Appearance being so summoned.

*The appearance of the first day
of Parliament.*

First, Let us consider which is the first day of the Parliament: Then their manner of Appearance.

The Writ shews the day whereon the Parliament is to begin: And anciently, though the King, and but a few of the Lords appeared then, but the Parliament was adjourned in expectance of the rest,
yet

yet that was reckoned the first day of the Parliament, If his Majesty were present, *prout* 6 *Edw.* 3. *Octabis sanct. Hillarii.* & 14 *Edw.* 3. in Lent.

Anno 15 *E.* 3. xv *Pasch.* and divers other Parliaments in his time, and in his Successors *R.* 2.

If the Parliament be prorogued, for that the King cannot intend it the same day, new Writs of Summons were sent out anciently, and another day appointed, *prout* *Anno* 23 *E.* 1. 2 *Novemb.*

Anno 23 *E.* 1. 13 *Julij,* *Anno* 11 *E.* 2. 3 *Martij,* et *An.* 6 *E.* 1. 11 *Decemb.* &c.

At this day if the Parliament be summoned, the day is appointed in the Writs, but if the same be prorogued by Writ patent (as the manner is now) and another day appointed; that is reckoned the first day when the King is present, and the cause of Summons declared.

Of this the precedents happen so daily I need not recite any.

This may be the Rule; that is the

the first day of the Parliament, when the King himself is first present, and this agrees both with the ancient and modern times.

The first dayes Appearance.

NO Records speak of such solemnity as is used at this day, neither could it be with that State, the King lying in the same house, and his Lodgings neer the same rooms where the Parl. was kept.

And it plainly appears by many Records of E. 3. That on the first day of the Parliament, a Proclamation was made in *Westminster Hall*, the Record sayes (*Feast Crie fait*) by the Kings Commandment; That all that were summoned to Parliament should repair to the painted Chamber, and so the Parliament began, that being reckoned the first day, though so few appeared: And it was adjourned to another day in expectation of the rest, *prout An.* 37. 38. 40. 43. 45. 47. 50 E. 3. Here could be no solemn procession to the Parliament in such state as is now used.

But

But here may rise a question how it should be known who were summoned, by which word was anciently understood the Commons as well as the Lords and Peers.

I answer, the Commons were called by the Returns of the Sheriffs, the Lords were admitted in appearing in their Robes, not being created by Investiture as the Earls and Barons were (*prout* in the former Chapter) and they were all called in the House by the Clerks Roll before the King came. That the Lords were called, may be inferred by this, that the Parliaments have been often adjourn'd the first day, because they were not all come, which could not otherwise be known but by the Call, so that they were called before it was adjourned: And it appears they were called the first day before the King came to Parliament of 18 E. 3. n^o 5. which Parl. was adjourned also the first day for lack of appearance; and after the adjournment, and after the names of the Receivers and Tryers of Petitions, there is entered this Memorand. *viz.*

Item,

Item, Let the names of the Lords who are summoned to Parliament be viewed, read, and examined before the King in Parliament, this day; and of them that are not come, let their names be delivered to the King in writing to ordain such punishment as he shall please; which shews plainly that the King was not present before when the Lords were called, for then this had been needless.

The next doubt is, In what place the Commons were called; The Record of R. 2. saith, that the Knights and Burgeffes were called by name in presence of the King, which shews they stayed without till then.

And 2 H. 4. *Consimile*.

Anno 13 H. 4. The Knights and Burgeffes were called at the door of the painted Chamber in the presence of the Steward of the Kings house as the manner is.

And at this day they are called by their names by the Clark of the Crown in the presence of the Lord Steward in the Court of Requests, whereof

whereof there are many precedents in Qu. *Eliz.* time.

Onely one precedent differs from all the latter (*viz.*) that of the 33 of *H. 8. Primo die Parliamenti*; where the Duke of *Suffolk* then Lord Steward, commanded the Clerk of the Parl. to read the names of the Commons, unto which every one answered, they being all in the Upper House below the Bar, and then the King came.

Now since the fifth year of Qu. *Eliz.* the Commons take the Oath of Supremacy; and since the third year of King *James*, they take the Oath of *Allegiance* also, which the Lord Steward administers unto some, and appoints certain of them his deputies, to give the same unto the rest.

The Lords are not called the first day, but have used to deliver their Writs onely to the Clerk of the Parliament: And the third day of the Parliam. the Summons being declared, and the Speaker being presented by the Commons; the second day the Lords are called by the

the Clerk of the Parliament, beginning with the lowest Baron, and so ascending to the highest, and the Proxies and other excuses (if any of the absent Lords) registred. Here I must confess one of my own *Errata's*: For being suddenly commanded to call the House, *Anno 21 Jac.* and unprovided of a Catalogue of their names, I made use of one then delivered me by the Earl Marshall, and began at the upper end with the Prince, and so descended: I quickly found mine own Errour, but none else perceived it. I proceeded, which I observed here lest my Successors mistake also by that precedent

*When the LORDS are to appear
in their Robes.*

The Heralds can give the best satisfaction when the King and the Lords did first go to the Parliament in such solemn manner as now, I have a precedent thereof in my Uncle *Boyers* Collections of Honour and Armes: I doubt not but the Lords did ever appear in
their

their Robes the first day, whereof we have no Parliament Records before the Journal books of *H. 8.* all the former being lost.

The Lords appear in their *Robes* also, whensoever the King is present (if their Lordships have notice thereof.)

And when their Lordships give judgment, and when the King gives the Royal assent to any one Bill or more by his Letters Patents, or sends a Commission to adjourn, prorogue, or dissolve the Parliament.

And in those cases the Lords sit all in their due places untill the Commission be read, and then the Lords Commissioners are to sit on formes overthwart the upper end of the House to execute their Commission.

Note this to be understood of such adjournment, &c. by the Commission, as the King himself hath used to be present at in person (*viz.*) of Adjournments, Prorogations, or Dissolutions of Parliament (*Sedeme Curia*) But if the Parliament be adjourned, or Prorogued (*Sedeme Curia*) and afterwards the King by
Pro-

Proclamation prorogue the same to a further day (which happens oft-
en) in those cases the Lords Com-
missioners appear not in their
Robes, for that the King himself
never used to be present at any
such adjournment in person.

If a Lord of Parliament either by
the misprision of the Clerk or o-
therwise, be not ranked in his due
place, and complains thereof, the
House appoints a Committee to
search the Records for his due place,
whereunto he is admitted without
any other Ceremony, for that he is
in the House already; *proust the Earl
of Surrey, Anno 6 H. 8. 15 Febr.*

The Lord Morley, *Anno 25 H.
8. 24 Martij.*

The Lord Clinton and Stafford,
An. 4. & 5 Ph. & M. 12 Feb.

But if the Lord that is summoned
doth forbear to come, because he is
not ranked in his right place;

His claim is first to be derived
by the house upon his Petition to
the King, and then his Lordship is
to be brought in his Robes between
two Lords in their Robes. Also the
King

King of Armes going before, *Prount* the Lord *de-la-Wear*, An: 39 *Eliz* 24 *Octob.* 15 & 24 *Novemb.* If a Lord of Parliament dies in the interim of a Prorogation, and his son receives his Writ to appear at the next Session; his Lordship appeareth not in his Robes, for that Ceremony was performed by his Father the first day of Parliament; Onely he delivers his Writ to the Clerk who enters it the same day; *prount Anno 7 Jacob. Richardus Com. Dorset,* and there be very many precedents of this nature (*viz.*) That the Writ is onely recorded in such cases, and not a word of their appearance in Robes.

And it were very fit the Lords did continue this order to deliver their first Writs to the Clerk to be entred: For it records their pedigree as well as the time of their first coming to Parl.

If a Lord of Parliament dyes (*sedente Curia*) and his Heir be summoned, he appears also without any ceremony, onely his first Writ is entred, and the day of his appearance

appearance, prout *An. 27 Eliz. 9 Feb. Tho. Dom. Darcy de Chiche,* and there be many precedents of this nature also.

And I remember well that the Lord *Stanhop* of *Harrington* dying (*sedente Curia*) in Parliament of 18. *Jacob.* his son *Charls* Lord *Stanhop* came and took his due place without any other Ceremony.

So did *Edward* Earl of *Dorset* after the death of his brother *Rich :* who dyed without issue Male in the Parl. 21 *Jac.*

And I have observed that divers Bishops have been summoned after the parliament is begun, in place of another Bishop who was dead, and onely delivered his writ to the Clerk to be entred without any other Ceremony, which was observed also in former time, prout *An. 27 Eliz. 23. and 27 March, Episc. Petriburgi.*

If the eldest son of any Earl be summoned as a Baron after the Parliament is begun, he is to be brought in his Robes between those two Lords, between whom he is to sit,

fit, Garter King of Arms going with his coat half way upon his left Arm, and his Lordship is to present his writ to the Lord Chancellor, and to stay by his VVoolfack untill the Clerk hath read the same, and then to be placed by those two Lords in his due place.

Vide a President of this, *Ann. 7. Jacobi* for the Lord Clinton, the eldest son of the Earl Lincoln, who delivered his VVrit kneeling to the Lord Chancellor, and stood by him untill it was read.

Vide Anno. 7. Jacobi Consimile, the Lord Walden.

And I remember well that the old Earl of Lincoln was very carefull both for the right place of his son, and the ancient ceremonies to be used at his sons first appearance.

The reason why Garter King at Arms is to wait, and wear his Coat but half way on, is for that his Lordship is in expectance of an Earldom, when Garter is to do him further service, and to wear his Coat wholly on.

If a Lord be newly created during the Parliament, he is brought into the House by any two Lords of the same Form in their Robes, Garter king of Arms going before with his Coat wholly on, and his Lordship is to present his VVrit to the Lord Chancellor, which being read, he is conducted to his place by those two Lords who brought him, Garter going before, *prout* the Lord Denxy *Ann. 2 Jacobi 7. Febr.*

And the Lord Knyvet, *Anno 4. Jacobi 4. Julii*, yet in the Parliament *Anno 18. Jacobi 20. December*, the Viscount Colchester being newly created in the interim of the adjournment of that Parliament, And brought in at the next access; Garter King at Arms carryed the Letters Pattents of his said creation and presented the same to the then Lord Keeper, and his Lordship delivered them to the Viscount, and so immediately he was placed.

So was the Lord Viscount Rochford brought in the same day, and so also were the Lords, *Brook, Mountagne* and

and Cranfield, being all new created Barons.

Quere Ration: why they presented not the Writs according to the ancient manner.

Anno 21 Jacobi 25 Februarii divers Lords who were newly created, and others who were in by discent, and were then first summoned, they all having appeared the first day of the Parliament in their Robes, were notwithstanding brought in the first day of the Parliament with the same ceremonies as belong to a Lord newly created, after the Parliament is begun when the first appears:

The Earl Marshall being present and directing the same.

The Names of the said Lords

George Duke of Buckingham created a Duke before the Parliament began.

Henry Earl of Kent came in by discent.

James Earl of Carlisle by new Creation.

I. yonell

Lyonell, Earl of Middlesex by new Creation.

Christopher Earl of *Anglesey* by new Creation.

William Earl of *Denbigh* by new Creation.

Thomas Viscount *Andover* by new Creation.

Henry Lord *de la Ware* by descent.

Lord *Barkley* by descent.

Robert Lord *Cary* of *Lepington* by new Creation.

And *William* Lord *Grey* of *Warke* by new Creation.

CHAP. III.

Locus & Modus sedendi.

IT follows to shew in what place they meet, and the manner of their sitting.

*Whether the Lords and Commons
did Anciently sit in one Room to-
gether.*

V *Ide the ancient Manuscript
Modus sedendi Parliamenti
Cap de Cas. & Ind. difficilibus.*

*Cum dubitatio & Casus difficilis
Pacis vel guerra emergat, &c. Injun-
gatur per Regem seu ex parte Regis,
si Rex non inter sit cuilibet graduum
Parium quod quilibet graduum sedeat
per se & liberetur Casus ille Clerico
suo inscriptis, & incerto loco recitari
faciant, ita quod ipsi Considerent inter
se qualiter Melius procedi poterit in
Casu illo, &c.*

With this agrees that with the
6 of E 3 at the Parliament held at
Yorke. viz.

The cause of Summons being
touching Scotland the (prelates
with the Clergy thereof by them-
selves) the Dukes and Barons by
themselves) and afterwards they
delivered their Joint-answer to the
King.

In the former Parliament of that
year

year at *Westminster Craſtino Mariae*, the cauſe was touching *Ireland*: the Prelates conſulted by themſelves, and after they gave a Joint-Answer, and they all joyned in one grant of a ſubſidie to the King.

Anno 6. E. 3. Octabis Hillarii the Prelats treated by themſelves, ſo did the Lords, and ſo did the Commons, and afterwards their Joint-Answer was reported to the King by the Biſhop of *Wincheſter*.

By theſe precedents it appears plainly that the Lords and Commons did firſt meet together in one Room, and yet had divers Rooms to conſult in, ſeverally and apart.

But this doth not directly and plainly prove that the Lords and Commons did ſit together in one Room.

The cauſe of Summons was declared to them altogether touching an aid for the King, they conſidered thereof and joined in grant of the ſubſidie upon condition to have their petitions granted, a joint Committee of the Lords and Commons are appointed to ſit upon the

said petitions from day to day until they be dispatched and reduced into the form of a statute, the Committees are named as well the Lords as the Commons.

Yet the two Houses sat apart: also that Parliament, for many things are recorded to be done by the Lords, whereunto the Commons were not joyned.

It is more of curiosity then of necessity to search for the truth of this matter.

Anno 50. E. 3. the cause of Summons ended, the Commons were willed to withdraw themselves to their ancient place in the Chapter House of the Abbot of *Westminster*, and there to treat and consult amongst themselves.

This shewes plainly that they had a place assigned them of old to sit in apart.

And when the King pleaseth, he may have the Lords and Commons sit together in one place, as they did *Anno 7. Jacobi* in the Court of Requests, the Lords sitting on the right hand by themselves, and the Commons

mons on the left hand, that day when the noble Prince *Henry* was created Prince of *Wales*.

Whether the Commons did anciently sit at conference with the Lords.

I Have heard it often mentioned whether the Commons did sit anciently with the Lords or no.

I will not resolve this doubt, for no Record can be produced on the one side or on the other, so that the usage must direct us how it was in former times : And since the Commons do in other Matters enjoy more ample priviledges at this day then the ancient Records mentioned, divers privy Councillors, and others of the Kings servants being now of that house, from whence they were formerly exempted, (*prout* in the 1 Chapter) it is not likely that such honourable personages would have waved this one priviledge, and stand in a crowd if they might have claimed a seat for their ease, which they never did Claim *temporibus H. 8. E. 6. P. et M.* nor o^f Q. Eliz. F 3 It

It will be said that heretofore a Cōmittee of the Lords have come into the house of Commons to confer with them, which was used even in *Anno 3. H. 8.* and there no doubt the Commons did sit and the Lords with them.

It is true, that this happened sometimes but was not constantly observed, and the Lords did (*discedere de fac.*) to go thither, as it is resolved *Anno. 2. R. 2. pl. Fui see. luce*, now this is out of use.

Their manner of sitting in Parliament at this day.

The Kings Seat.

HIS Majestie sits in the Chair of Estate whensoever he is present ; if represented by Commissioners either to begin or to hold the Parliament, the Cōmissioners (after the Commission is read) do now sit on the right side of the Chair of State beneath the steps.

Anno 51. E. 3. The Prince represented the King by Commission, and

and his Highness did sit in the Chair of Estate.

No other Ancient precedent of Parliament - Record shews where such Commissioners did sit, neither *Anno 3. E. 3.* when *Lyonel* the Kings Son held the Parliament. Nor *Anno Edward 3* when *Edward* Prince of *Wales*, held the same, nor those of *H. 5.* and *H. 6.* when the Kings were in *France*: *vide* the Journal of 28. of *Eliz.* where the Lord Treasurer Arch-Bishop of *Canterburie* *Burleigh* Lord Treasurer, and *Darby* Lord Steward represented the Queens person by Commission, and the manner thereof described at large.

The Princes place.

HIS Highness seat is on the left hand of the chair of Estate, that in the right hand was anciently for the King of *Scots*, when he used to come to our Parliaments.

The Kings childrens place.

IT is enacted *Anno 31. H. 8. Cap. 10.* that none but the Kings children do presume to sit at any side of the Cloath of State.

The Kings *Vicegerent* in Ecclesiastical Jurisdiction his place.

HIS seat is by the said Statute of *31. H. 8.* on the right side of the Parliament Chamber, above the Arch-Bishop of *Canterburie* upon the same form.

The other officers are thus placed by the said statute (*viz.*)

THE Lord Chancellor.

The Lord Treasurer.

The Lord President of the Kings Council.

The Lord Privie Seale.

Being of the degrees of Barons of Parliament, on the left side of the Parliament Chamber, on the higher part of the Form, of the same side,
above

above all Dukes except only such as shall happen to be the Kings son, the Kings Brother, the Kings Uncle, the Kings Nephew, or the Kings Brothers or Sisters Son.

The great Chamberlain.

The Constable.

The Marshal.

The Lord Admiral.

The Lord Steward.

The Kings Chamberlain above all others of the same Estates and degrees.

Vide An. 21 Jacobi, the Duke of *Buckingham* was admiral & placed next to the privy Seal, and above the Lord great Chamberlain; the Kings chief Secretary being of the degree of a Baron, above all Barons not having any of the offices above mentioned: and if a Bishop, then above all other Bishops not having any of the offices above remembr'd.

It is also enacted by the said statute, that if either the Lord Chancellor, Lord Treasurer, and President of the Kings Council, Lord privie Seal, or chief Secretary, shall be under the degree of a Baron of

Parliament, and then such of them as shall be under the said degree shall be placed at the uppermost part of the sack, the one of them above the other in order as above rehearsed.

On the right side of the Chair of State the Bishops are thus ranked by the Statute of 31. H. 8. (*viz.*) upon one form.

The Lord Arch-Bishop of *Canterburie.*

The Lord Arch-Bishop of *York.*

The Bishop of *London.*

The Bishop of *Durham.*

The Bishop of *Winchester.*

Then all other Bishops on the same side after their ancients as it hath been accustomed: But at this day two Arch-Bishops set upon one forme, and then the other Bishops in order upon two forms on the right hand of the State.

The Earls sit on the first forme of the left hand of the State; and on the first form of the Clerks Wool-sacks, sit the Viscounts. The

The Barons sit on the second forme on the left hand of the State, and upon divers other formes a cross the lower end of the house.

The Lord Chancellor, or the Lord Keeper (when the King is present, stands behind the cloath of State on the right hand) but when the King is not present, then his Lordship sits on the Woolfack thwart the House, the Seal and Mace by him.

The Judges sit on the inner-side of the Woolfacks.

The Kings learned Council sit on the out-side of the Woolfack next the Earls.

The Masters of the Chancery sit two on the same side, and two on the other sides next the Bishops.

The Clerk of the Crown, and the Clerk of the Parliament sit on the lower Woolfack and have a Table before them.

And the Clerk of the Parl. hath two Clerks under him, who kneel behind the said Woolfack, and write thereon.

When the King is present, none
of

of the Lords are covered.

And the Judges and Attendants do stand up untill his Majestie wills them to sit down.

When the King is absent, the Lords do Reverence to the State, and salute the rest at their entrance into the House, and then take their place.

The Judges sit also, but are not covered untill the Lord Chancellor signifies the Lords pleasures.

The Kings Council, and the Masters of the Chancery sit, but are never covered.

CHAP. IV.

*On what dayes the Parliament
may not sit.*

IN the ancient Manuscript, *De modo tenendi Parliamentum Chap de diebus, & Horis, quod Parliament. non debet teneri Diebus Dominicis sed cunctis alijs illo die excepto, & alijs tribus diebus scilicet omnium sanctorum & Animarum,*

Animarum, & Nat. sanct. Johannis Bapt. potest teneri.

Yet Parl. have been summoned to be held on the Sunday (*viz.*)

Anno 23 E. 1. 30 Septemb. Die dominico prox. post Festum sancti Martini in Hiem. And the same was prorogued by a new summons of *Novemb.* following to be held *Die dominico prox. post Festum beati Andrea Apost.*

Anno 27 E. 1. 6. Feb. Die dominico. An: 28 E. 1. 24 Decemb. Consimile.

Et An: 33 E. 1. 22 Januar. & 35 Ed. 1. 27. Febr. An. 1 E. 2. 19. Janura. & eodem An: 10 Martij. An: 2 E. 3. & 3, 4, 5, 6. & 7 & 16 E. 2.

An. 1, 2 & 4 E. 3. But none after *4 E. 3.* There are not any Parl. Rolls extant to shew what the Parl. did on *Sunday.*

Yet I find that subsequent Parliam. have sate on *Sunday*, *prout.*

Anno 6 E. 3. n. 7. Saturday the house of Commons had leave to depart, and the Commons commanded to attend unto the next day; on which the Parliament was dissolved.

Anno.

Of Parliament days. Cap. 4.

Anno 20 E. 3. N^o 11. in fine. On Friday the Commons delivered in their Petitions, which were considered by the Lords, upon Saturday, Sunday, & Monday next following, and on that Monday they were answered.

Vide Contrarium, An: 5. R. 2. The parl. was summoned to be held *Craft. omn. Anim.* which fell out to be on Sunday, and therefore it was adjourned unto Monday *no. 1.*

I find no Parliament summoned to be held on *All Saints* day, *All Souls*, or *St. John Baptists*.

Christmas da

A *Nno 3 E. 6.* The Parl. did sit on *Christmas day*, and read two Bills; and on *St. Stephens* day, and read one Bill: And on *St. Johns* day, but this is singular, and occasioned through the troublesome business of the Duke of *Somerset*.

Convocation dayes.

A *Nno 1 H. 8.* The Temporall Lords met in Convocation day, though they did no other business then receive Bills from the Commons, and sometimes not so much. And on those dayes some one of the Lords (though none of the great Officers) *Ex mandato domini Regis, qui domini spirituales absentes, & in convocatione occupati sunt (Continuavit Parliamentum usq; in diem Crastinum)* The Lord Chancellor was then a Bishop, and absent also.

This continued untill the 7 of *H. 8.* which year the Lord Chancellor did the day before continue also the *Parl.* untill the day after, *prout.*

Anno 7. H. 8. 30 Novem. Dominus Cancellarius propterea quod Dom. spirituales in Convocatione Crastiono die, occupandi, continuavit presens Parliament. usque in diem Lunae.

The next precedent for Convocation days is, *An: 25 H. 8.* For from the 17th until then we have no Journals.

Me-

Memorand. quod die Sabbati 22 Januarij (3^o die Parliam.) decretum est quod Domini spirituales in Convocatione diebus Martij, & Veneris proxim. sequent. & ex tunc die Vener. (donec secus melius videtur) versari possent. & procures sequentibus diebus sine Impedimento quotidie circa dimidietat. horæ octav. ante meridiem in locis consuetis simul convenirent, ad tractandum & Consulendum circa Reipublica negotia.

Afterwards. in this Parl. after the end of *Hillary* Term, this Fry-day was changed into Wednesday every week, but no order is entered for it in the Journal book: *An: 3 E. 6. 4 Novem. Hodie assignat. est Die Veneris per Convent. Episc. & alior. ejusd. ordinis Ecclesiar. in Ecclesia Pauli.*

Star-Chamber dayes.

A Nno 25 H. 8. Mercurij.
 4. Februarij Hodie Domin.
 Cancellor. de quo die Craſtino do-
 mini circa ſtudia Negotia in Camera
 Stellata conſultari, & Dom. ſpiritu-
 ales, Die Veneris in Convocatione
 converſati fuerint; ex conſenſu toti-
 us domus continuavit hoc praſens Par-
 liamentum in diem Sabbathi hora con-
 ſucta.

I find no other precedent directly
 for this and the Star-chamber days,
 being ſometimes one day in the
 week, ſometimes another; it ap-
 pears not by ordinary continuances
 of the *parl.* ~~at~~ many days was
 permitted, *Quia* a Star-chamber
 day. But when in Qu. *Eliz.* time
 the Star-chamber day was ſetled to
 be on *Wedneſdays*, you ſhall not
 find that the Parliam. did ſit on thoſe
 dayes in the Term-time.

Which was conſtantly obſerved
 alſo in the time of our late King
James, untill the Parliam. 18. *Jac.*
 24 April die *Martis*, upon motion
 made

made this day unto the House, that there is a great cause in the midst of hearing to be heard in the Star-chamber to morrow. The Lords were contented not to sit to morrow in the morning;

Provided that it be not drawn into a precedent; but that this House being the supreme Court, may sit upon a Star-chamber day, notwithstanding the absence of such Lords as do use to attend that Court.

And accordingly the House was ajourned unto the next day, being *Wednesday* in the afternoon.

And the next Star-chamber day being *Fryday* the 26. of *April*, the House did sit both in the forenoon, and afternoon.

CHAP. V.

The making of Proxies prove the Lords Right to be summoned.

THose Lords that could not appear according to their summons, made their *proxies*, and even this shews their Right to be summoned, else what needed their *proxies*.

But if they neither came, nor made *proxies*, then for their disobedience unto the Ks. Writ, they were amerced (*viz.*) Anciently an Earl at 100*l.* and a Baron at 100 marks. *Vide*, the ancient Manuscript, *Modus tenendi parliament. cap. de Inchoatione parliam.*

Which since was qualified many times (*viz.*) *An. 31 H. 6. N^o 46.* A Duke was taxed at 100*l.* an Earl at 100 Marks, and a Baron at 40*l.* if he came not to *parl.*

The

The ancient form of Proxies.

EXcellentissimo Principi ac Domino suo illustrissimo Domino Edwardo, Dei Gratia, Regi Anglia, & Francia, & Dom. Hibernia suus humilis Capellanus Johannes Abbas de Selbye Reverentia & honore cum jugi precum instantia apud deum quia impediment: variis, & Arduis Negotiis concernentib. reformationem status domus nostra sumus multipliciter impediti quod instanti parlamento vestro apud Westminst. in quinden. sanct. Mich. prox. futur. tenendo sine genum dispendio dom. nostra pradiet. personaliter esse non valemus.

Dilectos nobis in Christo & discretos viros dominos Henry de Barton, & Will. de Merefield, Cleric. Lincoln Ecclesie Canonicos, & eorum quolib. per se ad comparend. & audiend. pro nobis in hoc parlamento tract. & consentiend. Una cum pralatis & Regni procerib. super iis que ad Ecclesie dei, & ipsius Regni utilitatem expedientia videbuntur,
nec

nec non ad allagand. proponend. & proband. causas absentia, & non Comparuit. nostræ personali. procurat. nostros conjunctim, & divisim, & eorum utrumq; per se & in solidum ordinamus, facimus, & constituimus per presentes: Ratum & gratem Habetur. quicquid per duos procurator nostros vel eorum alterum, Actum seu gestum extiterit in promissis. in cuius Rei Testimonium, &c.

Regist. de Selbye fol.

In what Causes Proxies were made without the Kings License.

IN divers Writs of Summons the King denied to accept of proxies, *ea vice.*

Anno 6 E. 3. 27. Januar. proxies are absolutely denyed, ea vice.

Anno 11 R. 2. 20. Martii, proxies are also lately denyed, ista vice.

Anno 6 R. 2. 7 Januarii. proxies are absolutely denyed, ista vice.

Anno 27 E. 3. 20 Novemb. proxies are absolutely denyed, ista vice.

Anno

Anno 39 E. 3. 20 Januar. Proxies are denyed, ista vice. And the Lords demanded to appear the day before.

Anno 45 E. 3. 8 Januar. Ista vice is left out, and is thus (*Scientos quod propter arduitatē, &c. Procuratores seu excusationem aliquam legitimo Cessante impedimento pro vobis admittere nolumus* (which clause) *Legitimo Cessante impedimento*) all the former precedents have.

Hereupon the Lords that could not come, obtained the King License, and made *Proxies*, as did the Abbot of *Selbye*, *An. 22. E. 3.* whereas to the Parliament, *Anno. 26 E. 3.* (which had not that clause) he sent his *Proxy* without license, nor expressed any cause for his absence, save that he was hindred (*Impedimentis varijs, et arduis Negotijs*, for the Reformation of his Abbey.) *Vide Registr. de Selbye* in the hands of Sir Robert Cotton.

But this and the cause of denying their absence, *Ista vice* (*Legitimo Cessante Impedimento*) inserted in some special Writs, onely it seems
that

that all other times they might make their *Proxies*, notwithstanding they had not first obtained the Kings License.

I have not seen any other precedents for it of the ancient times, then that of the Abbot of *Selbye*; but under *H. 8.* it was usuall in cases of sickness, *prout.*

An. 3 H. 8. 20 Die Parliamenti Relat. est quod Abbas Salop. gravi infirmitate detinetur quod hic interesse nequeat, & ideo constituit procuratores suos Episc. Covent. & Lichfield, & Conntem Salop. Conjunctim & divisim.

Anno 6 H. 8. 12^o Febr. Domin. Scroop de Upsall agritud. detentus abest assidante ejus Famulo Jacobo Marshall, suosq; constituit Procuratores Alein de B: & Dom. Darcy.

An. 28 H. 8. 10 Junij, Consimile pro Abb. Monast. Salop.

Anno 26 H. 8. (Consimile) pro Domino Zouche. By which it appears plainly they had not the Kings License; yet in such cases an *Affidavit* was made of their sickness.

The Kings License to be absent, and to make Proxies.

I Have seen two Precedents thereof, *Anno 22 E. 3.* to the Abbot of Selbye, when the King had denyed in his Writ to allow of Proxies *ea vice.*

The other unto the said Abbot 2 *H. 4.* The first was under the privy Seal: Nay, the Abbots servant was so carefull, that he procured a Warrant under the Privy Seal of the Kings allowance of his Procurator.

The other 2 *H. 4.* was under the Signet onely, and they both testified the Lords name who procured the License from the King.

The ancient forme of the Kings License to be absent.

E Dward per la Grace de dieu Roy d' Engleterre, & de France, & Seigneur de Ireland, a vostre Ch. du diem Abbey de Selbye Saluts. Coment q' per grosses et urge antz besoignes touchants vous et reste de nostre Parliament

*notre
Cher en
Dieu*

liament a Westminst. & sur ce nous vous mandez pur Brieffe souz nostre graund Seale de cy estre in propr. persone sanz Faire Procurat en telle partie; mentinent a la Request. nostre Chare & foiall Johann Darcy nous vous tenons pur excuse de vostre venue in propre persone a mesme nostr. parlement, cest foitz issiu, q' faces un suffisant Procurator de y Venir en Vostre nom en maner appent nient Veillantz q' vous ne soiz endamage ne'm pesche en temps a venir pur Reason de nostre mandement, sinen soit qu'en Chose vous signifions per cestes nos litteres. Don souz nostre Privee Seal a Westminst. le 13 jour de Decemb. An. de nostre Regne de Angleterre 22. & de France ix.

The Kings License of latter times.

ANno 1 H. 8. 22 Die Parliamenti Licentiatus est Abbas de Crowland per Cancell. & Thesaur. per procuratores suos Alb. de Ramsey, & dictum Thesaur. id est. The Chancellor and Treasurer signified; that the King gave the Abbot License to
G depart,

depart, &c. And not that the Chancellor & Treasurer gave him leave; prout *An^o. 6 H. 8.* (in the beginning of the Book) *Abbas sancti Augustini de Cont. absence ex licentia Regis Dom. Bergavenny Nuncio, & constit. procuratores, &c.* And the License of divers others to be absent is recorded in like manner.

Yet in these years some have their licenses expressed to be *per literas dom. Regis* prout *eodem An. Dom. Hastings absens ex licentia Dom. Regis, & patet per literas ibid. 9 Feb. Consimile pro Abb. sancti Benedicti de Hulmo.*

An. 7. H. 8. 1^o P. die hodie recepta est billa Regis Manu signata per quam dominus Rex licentiavit Eddrum. Sutton Militem Dom. de Dudley, &c.

Consimil. pro Abbat de Thorney & pro Ab. de Ramsay, & pro Ab. Salop. Yet the License it selfe was not always shewen; prout *ibidem Dom. Rex licentiavit Abb. de Malmsbury. ut patet ex dictis Abb. de Wynchcomb, Will: Cumption Milite Nuntio existente, &c.*

An:

An: 25 H. 8. 28. 31. & 35 H. 8.
the Proxies are endited thus; *Lit-
tera procurat.* of such a Lord, *Ab-
sentis ex licentia Dom. Regis, At-
testante* such a one; But whether
the License were by word of Mouth,
or otherwise by Bill signed with the
Kings Hand, *non Constat.*

The Kings verbal License is suf-
ficient; Yet I suppose they then
had for the most part a formal Li-
cense signed by the King; and it be-
ing not produced, a Testimonial
thereof was required, which was
sometimes testified by a Lord, and
sometimes by a stranger; *prout An.
25 H. 8. 7. Jan.*

*Litera Procurat. in quibus Abbas
de Evesham sub Reg. grat. absens,
attestante Thoma Cromwel Arm. con-
stituit procur. &c.*

*Lettres procurator. in quib. Dom.
la Ware, &c. Attestante Thoma Crom-
wel, &c.*

*Litera, &c. Abbas de Crowland,
&c. Attestante Magistro Cecill, &c.
Litera, &c. Com. Essex, &c. attes-
tante Com. Oxon.*

Consim. An: 28. 31. &c. H. 8.

and downward: neither the License, nor any such testimonial was required, onely it satisfied that the Letters of Proxy mentioned the Kings License, which none will presume on unless he had it.

Unto whom Proxies may be made.

A Proxy cannot be made to a Lord that is absent himself. *Vide An. 38 H. 8. In fine Libri Journal* this entrance (*viz.*)

The Lord *Latimer* sent his Proxy, which the Clerk received; but it was repealed by the Lord Chancellor, for that the Lord *Latimers* Deputies were not present.

So if the Lord, unto whom the Proxy is made, be afterwards absent, the Proxy is void; Yea, although the Procurator be absent *ex licentia Regis*, and hath made a procurator also for himself, for the proxy is but an authority to give another mans assent, which cannot be transferred to a 3d. person. And therefore in such case the Lord *Vaux* made a 2d. proxy Anno. 18 *Jacob*

cobi Regis, which I think was rather to detain his particular Vote (a dignity particular to the Lords of Parl.) then to avoid the Kings displeasure : The first proxy being a sufficient excuse for his absence.

Neither is it the use now to make proxies unto strangers who are no Members of the House, nor to any of the Attendants, as to the Judges, Barons of the Exchequer, or the like.

Yet there are divers precedents that the Spiritual Lords have made proxies unto strangers; *prout* the Abbot of *Selbye* made *John Goul-dale* a Monck of that house, and *M Will: R. Clerk* his Procurator.

Anno E. 3. the year is not recorded.

And divers other precedents there are of this nature. The Lords Temporal had then the like right, and we may guess that they did make the like Proxies unto Strangers by this, that *Anno 14 Edw. 3.* in *Middle Lent*, Mounf. *William Scot*, and Mounf. *Will: de la Pool* were not summoned; and yet were appointed

Tryers of Petitions, a matter belonging to the Lords of the upper House :

So we may guess they came with Proxies not of any Spiritual Lords (for they sent Clergymen) but of the Temporal Lords, for they have the title of *Monsieur*, which sheweth they were Laymen.

So we may guess also that *Monsieur de sanct: Paul*, *Monsieur John de Pultenye*, *Monsf. Thomas Rookbie*, came with Proxies to that Parl. for they were not summoned ; and yet of divers Committees *promiscue* with other Lords in matters touching *Flanders*, *Bruxels*, and the Marches of *Scotland*.

An. 14 Edw. 3. n°. 13, 14. & 17.
So that strangers had Proxies, place, and voice in Parl.

But the question is, where they did sit ? surely not in that Lords seat whose procurator he was ; yet they do so at a general Council or Dyet beyond the Seas.

*The form of the Kings License to be
absent at this day*

The first extant is in the Journal
of 8 Eliz. in *hac ver.*

Right Trusty, and wel-beloved,
We greet you well. Where-
as we are informed that by reason
of sickness you are not able to make
your repair hither, to this our Ses-
sion of Parl. to be holden at *West-*
minst. We have thought good by
these our Letters to dispense you
for your absence, and to license
you to remain still at home for this
time, so nevertheless that you do
send up your proxy to some such
personage as may be for you, and
in your name give his Voyce, and
assent, or deny to such matters as
shall be treated and concluded up-
on in our said Parl. and this our
Letters shall be your Warrant.
Given under our Signet at our Pa-
lace at *Westminst.* the 20 of *Septemb.*
in the 8. year of our Reign.

The form of the Proxy at this
day.

OMnibus Christi fidelibus, ad quos
hoc præsens scriptum pervenerit,
Edwardus Dominus Zouche salutem,
noveritis me præsatum Domini Zouche
per licentiam. Serenissimi Domini no-
stri regis a præsenti hoc suo Parliamen-
to tent. & inchoato apud Westmin-
ster, duodecimo die mensis Februarii
ult. præterit. sufficienter excusat. abesse,
nominare, ordinare, constituere di-
lect. mihi in Christo prænobilem. &
honorand. virum Henricum Comit.
Southampton præclarissimi Ordinis
Garterii Militem, meum verum, Cer-
tum & indubitatum factorem, Attor-
natum, & procuratorem per præsentes;
eidemque procuratori meo dare & con-
cedere plenam auctoritatem, & potes-
tatem pro me & nomine meo & de su-
per quibuscunque causis exponend. seu
declarand. tractand. tractatibusq; hu-
jusmodi mihi factis seu faciendis consi-
lium nomine meo impendend. statutisq;
etiam et ordinationibus, quæ ex matu-
ro, deliberato Judicio Dominorum
tam

tam spiritualium quam temporalium in eodem Parlamento congregator. in-actitari, seu ordinari contigerint, nomine meo consentiendum, eisdemque si opus fuerit subscribend. ceteraque omnia & singula quæ in præmissis necessaria fuerint seu quomodolibet requisita faciend. & exercend. in tam amplis modo & forma prout ego ipse facere possem aut deberem si præsens personaliter interesssem. ratum & gratum habens & habiturus totum & quicquid dictus procurator meus statuerit aut fecerit in præmissis; in cuius rei testimonium præsentibus subscripsi, sigillumque meum apposui, datum decimo die Decemb. Anno Regni dicti Domini nostri Jacobi Dei gratia Angliæ, Franciæ, & Hiberniæ Regis, fidei defensor. &c. vicesimo, & Scotiæ quinquagesimo Septimo.

Omnibus Christi fidelibus ad quos hoc præsens scriptum pervenerit. I. domin. G. salutem. noveritis præfatum Domin. G. per licentiam serenissimi Domini nostri Regis a præsentibus hoc suo Parlamento tento & inchoat. apud Westminster duodecimo Die mensis Februarii 1623 Et continuat. per-

diversas prorogationes usq; ad & in vicesimum Diem April. ult. praterit: sufficienter excusatum abesse, &c. ut supra.

CHAP. VI.

De Summon. Causa.

BY whom the summons ought to be declared *vide manuscript. de modo tenendi Parliament. Cap. de pronuntiatione pro Parl. Cancel. Anglia vel Capitalis iusticiarius qui tenet placita coram Rege, vel alius honestus, & facundus iusticiarius vel clericus pronuntiare debet causam Parliamenti, Primo in genere & postea in specie.*

Vide tamen 9 H. 6. n° 1. Pro eo quod Johannes Episc. Eborum Cancelarius Anglia, cui ratione officii sui secundum consuetudinem Regni Anglia pertinuit causam summon. pronuntiare, &c. infirmitate detinetur, &c. Magist. Henricus Lynwood legum Doctor de Mandato dicti custodis declaravit, &c.

And

And in the 5. of E. 3. the first Parliament now extant that hath the Journal proceedings of the Parliament (which anciently was not recorded) The Bishop of *Winchester* being Chancellor, declared the cause of Summons.

*An. 6. E. 3. Cro. Mich. Consi-
mile.*

An. 6. E. 3. die lune post fest: sancti Gregorii the Arch Bishop of *Canterburie* declared the cause of Summons touching the Kings going into the holy Land with the French King; then the Bishop of *Winchester* being the Ghancellor declared the same also: and afterwards the Lord chief-Justice *Jefferie*, by the Kings commandement declared other causes for which the Parliament was summoned (*viz*) to redresse the breach of peace, and other mischiefs at home n^o 6.

And when the breach of peace was handled, the Bishops and the procurators for the Clergy departed all out of the house, for that it did not belong unto them. And so the Lord chief Justice was Speaker
all

all that Parliament n^o 10 & 12. and so the chief Justice was Speaker in many Parliaments in *E. 3.* and in the 2 *H. 4.* but in no other Kings time when the Lord Chancellor was present.

Upon what occasions the cause of summons have been declared by the Lord chief Justice *tempore E. 3.* though the Chancellor were present.

OBserve the occasions to have bin offered when a Bishop was Chancellor, and the cause of summons was either touching Malefactors, or breach of the peace or the like, for then none of the Bishops or the Clergy could (by Canon of the Church) be present. Or when it concerned the usurpations of the Pope, for *Ceaux paroles ne gistont nye enbouch de Prelate* saies the Record *An. 51. E. 3.*

Therefore in divers years of *E. 3.* the same hath been declared by the Lord chief Justice *prout An. 6. E. 3. die lune post finem sancti Georgii*
de.

departed out of the house when these matters which concerned the breach of peace were handled *An. 6. E. 3. veneris devant le Fst sancti Nicholai* by the Lord chief Justice Jeffery le Scoop concerning Ireland and the malice of the Rebels there, &c.

An. 6. E. 3. Octabis sancti Hilarii by Jeffery le Scoop Lord chief Justice touching Scotland and the Marches.

An. 13. E. 3. Qninden. Mich. it is not recorded by whom the cause of summons was declared: nor *Eodem An. Octabis sancti Hilarii*, nor 14. *Ed 3* in Lent, nor in the second Parliament in that year, nor 15 *E. 3.* nor 20 *E. 3.* nor 25. *E. 3 Octabis purificationis Marie.*

An. 17. E. 3. the cause of summons touching France was begun by the Chancellor in general, but pursued in particular by *Mons. Barthol. Burgherssh no. 7.* yet the Chancellor was speaker afterwards *n. 10.* Touching the better observation of the Laws of the Land, and against maintenance.

But.

But the usurpations of the Pope were treated *per Comites, Barones, & autres nobles, & toute Le Commo. vide* the petition for the statute against provisions, &c. n. 6. The prelates are not named.

Anno 21. E. 3. Cro Hillarii per Monsf. William de Thorpe touching the French wars, and how the peace may be kept at home.

An 22. E 3 by Monsf. VWilliam de Thorpe Chief Justice touching the Wars of France.

An. 25. E. 3. in Festo Hilarii per Monsf. de Shareshall chief Justice touching the disturbers of the peace and maintainers of quarrels, &c. And also touching the Realm of France, the Kings Inheritance.

Ann. 27. E. 3. At a great Coucel per VWilliam Shareshall touching the staple.

An. 29. E. 3. Cro. sanct. Martini Monsf. VWilliam de Shareshall Chr. Chief Justice dit que il pleist a Roy que la Cause de summons soit Monstre per Monsf. VValter de Mannye touching France.

An 26 E. 3. per Monsf. Henry de Green

Green chief Justice, touching the liberty of the Church, and the peace of the Land, &c. And touching *Scotland*, and to advance the small price of Wool, &c.

Anno 37 E. 3. Octab. Hillar.
Proclamation was made by the Kings commandment in *Westminster* Hall, that all the Prelates, Lords and Commons who were come to the Parliament, should draw themselves to the painted Chamber; and afterwards on the same day there being in the said Chamber the Chancellour, Treasurer, and some of the Prelates, Lords and Commons, who were come to the Parliament, Sir *Henry Green* the Kings Chief Justice told them in English, that the King is ready to begin his Parliament, but that many of the Prelates, Lords, and Commons who are summoned are not yet come, wherefore the King willeth that they should depart and take their ease untill Munday. On which day the cause of Summons was declared by the Bishop of *Ely* then Chancellour, touching the liberties

berties of the Church, and the grievances of the people.

These are the Parliaments of *Ed. 3.* that mentioned the Chief Justice.

In all the subsequent Parliaments in his time, the cause of Summons was declared by the Chancellor, and he hath been Speaker.

Except that of 47 *Ed. 3.* The summons was declared by Sir *John Knevet* Chancellor, and the next day Sir *Guy Brian* more particularly; and that 15 *E. 3.* where the cause touching Modern Affairs was declared by the Bishop of *St. David* the Chancellor, and the usurpation of the Pope by Monsieur *Robert de Alhton* the Kings Chamberlain.

Since *E. 3.* the Cause of Summons was ever declared by the Chancellor, if he were present, though the day after some others Matters have been opened unto the Lords and Commons, *prout* by the Steward of the Kings house.

Anno 2 R. 2. at Gloucester, & *Anno 5 R. 2.* by Sir *Hugh Segrave* the
Kings

Kings Treasurer, and *Anno 6 R:* by the Bishop of *Hereford*, &c.

The like hath been in latter times, *Anno 21 Jacobi*, by the Duke of *Buckingham* touching the Match with *Spain*, and the recovery of the *Palatinate*, &c.

An: 2 H: 4: The cause of summons was declared by Sir *William Thirving* Chief Justice of the Common Pleas.

Yet the Parliament-businesse was afterwards managed by the Chancellor not present the first day.

Whether he that anciently declared the Cause of summons not being the Chancellor were Speaker also all the Parliament, though the Chancellor was present?

These ordinary matters are not entred usually in the Rolls of *E. 3.* yet by some we may guess at the rest.

Vide Anno 25 E. 3. the summons were declared by *William de Shareshall* Chief Justice; and Receivers
and

and Tryers of Petitions being read, he willed the Commons to put their advice in Writing, and deliver it to the King on Thursday following: so that he was Speaker, and yet the Bishop of *Winchester* was Chancellor, and present; for the Record sayes, that he delivered the Lord of *Arundels* Petition unto the Clerk to be entred, N^o 8. & 9.

Anno 25 E. 3. in festo sancti Hilarii, Sir *William Shreshall* Chief Justice delivered the cause of Summons, N^o 1. 6 and on Friday following willed them to deliver in their petitions N^o 8. so he managed the *Parliament* businesse, and yet the Chancellor was present, for he is appointed to assist in the trying of Petitions, the cause of importance, N^o 3. & 4.

And in all other Parliaments of *Edw. 3.* when the Kings cause of Summons was declared by the Chief Justice, the Chancellor was then present as may appear by the Tryers of Petitions.

So that in those Parliaments it cannot be said that the Chief Justice

Justice did supply the Lord Chancellors place (for that is properly when he is absent) but was appointed by the King to be Speaker that Parl.

Anno 29 Ed. 3. The Chief Justice declared that the Kings pleasure was that the cause of Summons should be declared by Monsieur *Walter de Manny*, and so it was; Yet the Chief Justice managed the Parliament businesse as Speaker. For presently after Monsieur *Manny* his discourse, he called the Commons to advise thereof, &c. and make ready their Petitions, N^o 10.

And the petition of the Earl of *March* being read, it was said by Monsieur *Will: Shareshall*, and the Lords then present, with one minde, and one accord, that it seemed to them, That the Petition was good and reasonable to them, &c. *Ibid* after the Petitions of the Commons; here you see the Chief Justice, ranked first above the Lords in delivering of their Votes.

So that it is plain, the Chief Justice

Justice managed the Parliament-businesse as Speaker of the Parliament appointed by the King, and that he did execute, (not supply) the place of the Chancellor therein.

For in such cases where the Chancellors place is supplied, there when the Chancellour comes, he executes his office himself.

Prout An: 31 H. 6. The Chancellor being absent (saith the Record) the K. commanded the Bishop of *Lincoln* to pronounce the cause of Summons, *N 1. March. 6.*

But when the Chancellor was come, he prorogued the Parl. by the Kings commandment, *No: 12. the 18. of March.*

Whether he that anciently declared the Cause of Summons (not being Chancellor) had any Commission (as now) under the scale or no?

Here by the ancient Parliaments, I mean those whose Records be kept in the Tower.

Anno

Anno 6 E. 3. Luna post fest. sancti Gregorii, the Chief Justice by the Kings commandment declared the cause of Summons, &c.

No: An: 21 E. 3. Consimile by the Kings commandment declared the cause of Summons, &c. *No.*

Anno 21 E. 3. Luna post fest sancti Gregorii, &c. Consimile by the Kings commandment, which in my opinion is to be understood by a Verball commandment onely, and not by any commission: For none is recorded in any of the Rolls in his time, which would have been in one Parliam. or other, whereas Commissions of far lesse moment are entred.

In two Parliaments of *H. 6.* The Chancellors place was supplied by a verball authority *prout.*

Anno 9 H. 6. the Chancellor being sick, unto whom it appertains (*Ratione officii sui*) to pronounce the cause of Summons, the Duke of *Gloucester* (the Kings protector) appointed Doctor *Lyndwood* to pronounce the same.

The 31 *H. 6.* the Chancellor being

ing absent, the King commanded the Bishop of *Lincoln* to declare the cause of Summons. There was then no Commission granted to supply the Chancellors place as now of later times.

In the end of this Chapter shall be shewed when the first Commission was granted, and precedents of the severall forms thereof.

The manner how the Cause of Summons is declared, when the King is present in person, and how when his Majesty is represented by Commission.

THe King is ever present when the cause of Summons is declared, either in person, or by Commission: If in person, the Lord Chancellor doth first remove from his place, which is on the Kings right hand behind the Chair of State, and confers privately with his Majestie.

The cause of which Ceremony
may

may seem to be this; that as none but the King can call the Parliam. so it may appear that none but his Majestie can propound and direct wherefore it is called.

And this Ceremony is ever observed by the Lord Chancellor, before he speak any thing in Parliament when his Majesty is present. As for the continuance, prorogation, or dissolution of the Parliament, as they are not entred to be done (*ex Mandato Domini Regis*) so they are not entred to be done *perle Roy*, whereby it seems this ceremony was observed also when the K. was present.

If the King be represented by Commission, then the Lord Chancellor sits on the Woofsack. The Commission being read, the Commissioners repair to the seat prepared for them, on the right side of the Chair of State beneath the steps, then the Lord Chancellor ariseth and conferreth with the Commissioners, and returns to his place on the Woofsack, & there declares the cause of summons, *prout Anno 28 Eliz. 29 Oct.* *Vide*

Vide An: 51 Ed. 3. The Prince of Wales represented the King in Parliament, and sate in the Chair of State.

Here may be a question, whether the Lord Chief Justice sate *tempore E. 3.* when he declared the cause of summons : And where he that should now supply the Lord Chancellors place, ought to sit when he declares the same in the Kings presence.

In my opinion he ought to sit in his own proper place, untill he doth ariseth to confer with the King, and then to declare the same in the Lord Chancellors place, as he may be neer the King. It is not fit that he should sit or stand at the Woolfack, and speak with his back to the King, but I have no precedent for it.

*The Commission to supply the
Lord Chancellors place.*

E *Lizabeth* by the grace of God,
Queen of *England, France,*
and *Ireland,* Defender of the Faith,
&c.

&c. To our trusty and wel-beloved Sir *Robert Catelnye*, Knight, Chief Justice of the *Pleas* to be holden before Us greeting. Whereas our trusty and wel-beloved Councillor Sir *Nicholas Bacon* Knight, Lord Keeper of our great Seal of *England* is at this present so visited with sicknesse, that he is not able to come to the upper house of this Our Parliament holden at *Westminster*, nor there to supply the room and place in the said Upper House, among the Lords Spirituall and Temporal there assembled, as to the Office of the Lord Chancellor or Lord Keeper of the great Seal of *England* hath been accustomed, We minding the same place & room to be supplied in all things as appertaineth, have named and appointed you : And by these presents do name, constitute, and appoint, and authorize you from day to day, and time to time hereafter during our pleasure, to use and occupy the place and Room of the said Lord Keeper in our said Upper House of Parliament
H amongst

amongst the said Lords Spirituall and Temporal, there assembled, and there to do and execute in all things from day to day, and time to time, as the said Lord Keeper of the great Seal of *England* should, or might do, if he were there present, using, and supplying the same place; where We will and command you the said Sir *Robert Catelyne*, to attend into, and about the Execution of the Premises with effect: And these our Letters Patents shall be your sufficient Warrant and Discharge for the same in every behalf. In witnesse whereof we have caused these our Letters to be made Patents. Witnesse our selfe at *Westminster* the 25. of *October*, in the 8. year of our Reign.

Marten

CHAP. V.

De Prolocutor. Domus Communis.

The Commons ever had a Speaker.

THat the Commons have ever had a Speaker, I think none will doubt; they needed none in the ancient times when both Houses sate together: But I shewed in the third Chapter that the Commons ever had a Speaker for their consultation apart from the Lords, though they did often meet and sit together in one room, and then a Speaker was necessary, to avoyd confusion of speech and Arguments.

To resolve this more clear, *Vide lib. sanct. Albini, fol. 207.* in Sir Robert Cotton's Library. The answer of the Parliament, *An. 44. H. 3.* to Pope Alexander touching the recall of *Adomar* the Elect Bishop of *VWinchester* from banishment, viz. *Si Dom. Rex & Regni Majores*

jorez hoc Volent, Communitas tamen ipsius ingressum in Angliam jam nultenus sustineret, which is signed and sealed by all the Lords, and by *Petrus de Mounteforte Vice totius Comitatus*; which shewes plainly that he was then Speaker: For the same words did Sir *John Tiptoff* their Speaker signe and Seal to the Entayl of the Crown *Parl. An: 7. et 8 H. 5.*

There are some other Records, out of which one may guesse they had a Speaker; *prout Parl. An: 13 E. 3. N° 9. Les Chivalers des Comtes & les Commons responderent per Monsieur William Trussell,* who may be supposed to be their Speaker.

But the first that doth directly name him is the parliament. *51 E. 3. N° 87.*

The last day of the Parliament (saith the Record) Sir *Thomas Hungerford*, Knight, Speaker, declared to the Lords that he had moved the King to pardon all such as were unjustly convicted in the last Parliament, and that the King willed him
to

to make speciall Bills for them, which he had done for seven, &c.

It can be no Argument that the Commons had no Speaker before the 51 E. 3. because no former Records mention him; for this is to be noted, that the ancient Rolls did record onely what Acts passed between both Houses, and what Laws were made, and omitted the Formes and Ceremonies then used.

There are divers Parliament Rolls of R. 2. that mention the Speaker in the beginning at this presentment or protestation, or the like, and ever after he is omitted in the same Rolls, and all is entred to be spoken by the Commons not naming him at all *prout Anno 1 R. 2.*

An. 2 R. 2. apud Gloucester no. 18. 20. 22, 23. 24. 26.

An. 4. R. 2. No. 10. 12, 13,

An. 5. R. 2. no. 10. 16.

An. 21. R. 2. no 8. 9. 14. 16.

And the Parliament Rolls *Annis 1. 2. 4. 5. 6. & 11. H. 4.* do mention the Speakers protestation.

But whatsoever is spoken, or done as on the behalf of the Commons is recorded to be done by the Commons, and the Speaker not once mentioned.

The like may be observed out of the Parliaments *An. 2. H. 6. no. 6.*

An. 4. h. 6. no. 10. An. 6. h. 6 no. 16. Anno 29. h. 6. no. 16. And Anno 12 E. 4. no 10. And An. 22 E. 4. no 10. An. 29. h. 6. no 16. An. 31. h. 6. no 3. Which say that that was spoken by the Commons, without doubt was spoken by the Speaker on their behalf.


Whereas in divers other Parliaments of *R. 2.* and *h. 4.* and downwards to this day the partie that speaks for the Commons is alwaies recorded (*viz.*) the Speaker anciently, and the Messenger of latter times.

And although the Parliament Rolls of *1. 2. 4. 5, 6. 17. 20. 21.* years of *R. 2.* do mention the Speaker, and his solemn protestation is there made, and recorded; yet there be divers other Parliament Rolls: *R. 2.* wherein the Speaker is not
once

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once named at all (*viz.*) *An. 5. R.*
2. the 7 *May An. 6 R. 2.*
the
of--*Octabis Mich.* and *Annis 9. 10.*
11. 13, 14, 16, and 18. *R. 2.* So
that I do not marvel that the Re-
cords of E. 3 (which are the first
Parliament Rolls now extant) do
not mention the Speaker, and there-
fore, I may boldly affirm, that the
Commons had their Speaker as well
in the time of *R. 2.* when it is ap-
parent they had a Speaker though
not mentioned in the Rolls (*viz.*)
in all the parliaments between the
16. and the 17. *R. 2.*

The Election of the Speaker.

 T this day the cause of sum-
mons being declared, if by
the K. (who in this learned age,
hath ever delivered the same to the
great admiration of hearers) The
Lord Chancellor confers first with
his Majestie and then in his name
commands the Commons to assem-
ble in their house, and to choose one
of their Members to be their Spea-
ker,

H. 4

ker, and to present him to his Majesty on a day certain.

If the cause of summons be delivered by the Lord Chancellor or by any other whom the King appointed, he concludes his speech with the Kings commandement to the Commons to chuse their Speaker, without removing from his place to confer first with his Majesty, or with the Commissioners if the King be absent.

The Commons being thereupon assembled in their house, one of the Commons putteth the rest in mind of their charge given in the upper house, touching the chusing of a Speaker: And then doth of himself commend one unto them, and desireth their opinions to be signified by their affirmative or negative voices: And if any man stand up and speak against him so named alledging some reason, he ought to name another.

When it appeareth who is chosen, after a good pause he standeth up and sheweth what abilities are required in the speaker, and that there

there are divers amongst them well furnished with such qualities, &c. disableth himself, and prayeth a new choice to be made, which is commonly answered with a full consent of voices upon his name.

After which two go unto him in the place where he sits, take him by the Arms, and lead him to the Chair, after a while he riseth, and uncovered, with humble thanks for their good opinion of him, promiseth his willing endeavour to do them service, &c.

Then some and commonly (he that first spake) puts them in mind of the day to present him, &c.

The mace is not carryed before him, untill his return, being presented to the King and allowed of.

Here may be 2 questions moved.

1. Whether the Commons might chuse their Speaker if the King commands them not?

2. Whether the election be in their own absolute choice?

For to clear these two we might

H 5 view

view the ancient Records, those of *R. 2* are the first that mention their Speaker.

It doth not appear by any of them, that the Commons had ever had any such commandement to chuse their Speaker, neither is a Word of it in any Record of *E. 3* which have the speeches at large touching the cause of summons, most of them concluding with a charge of the Commons to consider and advise thereof amongst themselves, but nothing touching the Election of their Speaker.

Yet out of doubt they did first chouse their Speaker, before they entred into any debate of charge.

The first charge to chouse their Speaker, is in *Anno 2. Henry 4.* but that onely excepted, it is continued from *2 Henry 4.* untill this day, and the long use hath made it so material, that without the Kings Commandement or leave, they cannot chouse their Speaker, which appears plainly by this, that in *Anno 31. H. 6.* the Parliament being prorogued, and the Speaker arrested

rested in execution in the *interim* before the access, The Commons prayed his enlargement, which after long debatement of the priviledges of Parliament was denyed, and then certain of the Lords were sent to the Commons, & commanded them in the Kings Name to choose a new Speaker, and thereupon they did so.

And of late years, in the time of Queen *Elizabeth*, the Parliament being prorogued, and the Speaker dead in the *interim*, before the access, the Commons before they proceeded to any businesse, acquainted the Lords therewith, and desired the Lords to intimate to the Queen, (as shall be more largely declared hereafter in this Chapter) and so were commanded by her Majesty to choose a new Speaker.

(2) But as touching the second Question, surely the Elections of the Speaker was anciently free to the Commons, to choose whom they would of their own House, which appears in this, that the King never rejected any whom they made choice of.

Vide.

Vide 5. R. 2. the Parliament began the 4th. of November, and the xxviiith. of November the Commons came and presented Sir Richard Walgrave, whom they had chosen for their Speaker, who excuseth himself, desiring to be discharged. But the King (*luy Chargeast del faire per sa legiauntie*) in as much as his companions had chosen him, N^o. 9.

Whereby it appears plainly that the choice was absolutely in their own power.

The Presentment of the
S P E A K E R.

AT the Day appointed, his Majesty sitting in his Royal Throne, and the Lords all in their Robes.

The Commons are called in, who being come, the Speaker is brought between two of them, with low obeisances to the Barr, and so presented at the Barr unto his Majesty:
The

The presentment of the Speaker is not recorded in any of the Rolles of E. 3.

And none of R. 2. speaks of the Kings Commandement to choose their Speaker, so that there could not be any day appointed to present him: yet I suppose the Commons did ever first present their Speaker, before they declared any thing to the King, otherwise what needed the Speakers excuse unto the King, before he was admitted to speak in the first year of R. 2. which no Record saies was a new Institution, and therefore no doubt was in use also under *Edward* the third, and before.

From the second year of *Hen.* 4th. and downwards, the Commons are willed to choose their Speaker, and to present him.

The Speakers Excuse.

THis is now formal and out of modesty, for he first excuseth himself unto the Commons when they elect him, and afterwards to the King when he is present.

The

The first excuse that I find is that of Sir *Richard Walgrave* Knight, Speaker, *Anno 5. R. 2.*

Whom the King charged upon his Allegiance to take it upon himself, he was chosen by the Commons.

The next is *Anno 1. Henry 4.* of Sir *John Chenye*, who made no excuse at his presentment: But the next day after he and they came before the King, and declared his disability to serve by reason of a sudden disease: And that the Commons had chosen Sir *John Dorewood* in his place, beseeching his Majesty to allow thereof, which the King did, and commanded Sir *John Dorewood* to be their Speaker, and he made the common protestation for himself, and the Commons, but no excuse *no 63.*

The next excuse is *Anno 5. H. 4. N: 8.* of Sir *Arnold Savage*, which the King would not allow of.

Anno 6. H. 4. N: 8. Sir *William Sturmy* made no excuse.

An. 7. and 8. H. 4. N: 9. Sir *John Tiptoft* desired to be excused
in

in respect of his youth, But the King affirmed the Election.

And all other Speakers in *Hen. 4.* his time, desired to be excused, and some under *H. 5.* and some others did not; it was not constantly observed, but from the 6th: year of *Henry 6.* since which time they have all (except two) desired to be excused: yet none were excused save onely Sir *John Popham* Knight, *Anno xxviij. H. 6.* whom the King discharged, and thereupon the Commons chose, and presented *William Thresham* Esq; who made no excuse, neither did Sir *William Oldhall*, *Anno xxix. H. 6.* desire to be excused.

At this day, the Speaker having made his excuse, the Lord Chancellor confers with the King, and then telleth him that his Majesty doth approve the Commons choice, and will not allow of his excuse.

Then the Speaker proceeded to his speech, but anciently he made first a protestation as followeth.

The *SPEAKERS* Protestation.

THe first Protestation is that of *1 R. 2. No. 15.* yet no doubt the like was made in former times, though not entred; For I find no new Institution, or Order for this, neither could it be new, being in the beginning of the first Parliament of this young King.

The words of the Protestation are these, (*viz.*) That what he was to say was from the whole House, and therefore required that if he should happily speak any thing without their consents, that the same might be amended before his departure from the same place, *Nº. 15.*

Anno 7. H. 4. Nº. 9. Sir *John Tiptoft* was presented and affirmed by the King, his excuse by reason of his youth being first recited, this was the second of *March*; on the *xxviiijth.* day of *March*, he made the common Protestation, it should seem he was in good hope to be excused: And therefore he was unprovided.

provided of a Protestation, which he made not until he had somewhat else to speak on the behalf of the Commons, and desired a confirmation of their priviledges: on the second of *April*, he desired his Protestation to be entred, and desired also in the name of the Commons, that if they shall deliver any thing in writing, the same writing may be delivered to them again, at any time during the Parliament, to be amended if need be at their pleasure, unto which the King assented.

At this day the Speaker wholly omits the Protestation, neither is it now needfull, for he never comes to speak on the behalf of the Commons, unlesse to demand Judgment against any whom they have accused to the Lords.

His Spake ancient at this day.

A Nciently the Speaker came not before the King, untill he had somewhat to say unto his Majesty, on the behalf of the Commons, and then having first made his Protestation.

tion for amendment of any thing he should speak otherwise then he was directed : He proceeded to speake in the name of the Commons, and if he speak any thing of his own mind, as sometimes it hapned, he declared it so, but never made any Oration, as now of latter times.

To prove all this, *Vide* all the Parliaments of *R. 2.* where the Speakers Protestation is first made.

Anno 1. R. 2. His speech followes his Protestation, but it concerns not the cause of Summons, but matters *dehors*, so that it seems he was directed therein by the Commons.

Anno 2. R. 2. he rehearseth the Chancellors speech, and answers in the Name of the Commors, which shewes plainly the Commons direction for his speech.

Anno 3. R. 2. he delivers the answer of the Commons touching the aid required.

Anno 6. R. 2. The Commons debated two days amongst themselves, of their charge touching the Kings passage into *Flanders*, then they desired conference with the Lords,
after

after consultation had, the Speaker came; and made his Protestation, and then delivered the Answer of the Commons, so that the Speaker came not untill the Commons had agreed what he should say. And no Record *Ed. 3.* mentioned either the speakers presentment or protestation, But the answer of the Commons when they were agreed thereon; though out of doubt the same was delivered by the Speaker onely.

Afterwards, *Anno xvij. R. 2.* For between the 6th. and the 17. no Speaker is Recorded.

The Speakers presentment and protestation are onely entred, and no speech the first day, *Anno xx. & xxi. Consimile.*

And so in very many Parliaments of *H. 4. 5.* and *H. 6.* and *E. 4.* and downwards to the *6. H. 8.*

Which Protestation the Commons also directed, as may appear *Anno xiiij. H. 4.* where the Speaker required on the behalf of the Commons, that it would please the King, that they might be advised
of

of their Protestations untill the next day; which plainly shewes, That the Speaker spake nothing (his excuse excepted) but what the Commons advised him.

Vide etiam Anno 2. H. 4. the Speakers Protestation being allowed, he then of his own authority (saith the Record) rehearsed the cause of Summons.

So that if he made any speech of his own he declared it so.

Of latter times, the Speakers speech is what it pleaseth himself, having no direction at all from the Commons touching the same; Neither do now omit their ancient Protestation, and in lieu thereof, make Petition to the King on the behalf of the Commons, some in generall words, for all their ancient words, and some in particular.

1. For access unto his Majesty.
2. For freedom of speech.
3. And for freedom from Arrests.

And they did ever enjoy these priviledges in as ample manner as now, though not formerly prayed by the Speaker.

I have entred this last Speakers speech, *Sir Thomas Crewe* at large, in the Journal xxi. *Jacobi Rs.* which in his opinion is the best that is Recorded since the 6. of *H. 8.* it consists not in verball praises, but in real, fit for the time, and well be-seeming the dignity of a Parliam-ent.

The Speaker having ended his Oration, wherein he always makes some requests on the behalf of the Commons: The Lord Chancellor confers again with the King, and makes answer thereunto in his Majesties name, granting his requests for access to his Majesty, and for their Liberty and Priviledges in as ample manner, as they have enjoyed them in any time of his Majesties Progenitors.

That the Commons ever enjoyed those priviledges, which the Speaker now petitions for, though never desired by any of the Ancient Speakers, untill after the 7th. year of King *H. 8.*

The Petitions are now three, touching their Priviledges, (*viz.*)
1. First,

First, For access unto his Majesty.

Secondly, For freedom of speech.

Thirdly, For freedom from Arrests.

As touching access unto his Majesty, it appeareth plainly they ever enjoyed this, ever when the Kings were absent from Parliament, prout *Anno 51. E. 3.* The King being then sick at *Eltham*: The Speaker, *Sir Thomas Hungerford* declared to the Lords, that he had moved the King to pardon all such as were unjustly committed in the last Parliament, &c. *Nº. 87.*

That the King was then sick at *Eltham*, *Vide Nº. xxij.*

At all other times of *R. 2. Hen. 4.* and downwards, the Commons with the Speaker were admitted into the Kings presence in Parliament, to deliver their answers: And oftentimes under *R. 2. H. 4.* and *H. 6.* they did propound matters to the King, which were not given them in charge to treat of.

This request for access unto his Majesty,

Majesty is first Recorded, *Anno* xxviij. *H.* 8. to be made by *Richard Riche* then Speaker.

Then by *Thomas Moyle* Speaker, *Anno* xxxi. *H.* 8. And afterwards by all others whose speeches are in the Journalls.

The Speakers Petition for freedom of speech is not recorded, before the 33. *H.* 8. made by *Thomas Moyle* Speaker.

Neither was it ever denyed them, for the Commons would never suffer any uncomely speeches to pass of private men in their House, much lesse of the King, or of any of the Lords.

They did oftentimes under *E.* 3. discuss and debate amongst themselves many things concerning the Kings Prerogative.

And agreed upon Petitions for Laws to be made directly against his Prerogative, as may appear by divers of the said Petitions; yet they were never interrupted in their consultations, nor received Check for the same, as may appear also by the answers of the said Petition.

These

These Precedents of *E. 3.* (are the best) he being the right Heir to the Crown, absolute in his government, and welbeloved of his people, and may be freely cited.

R. 2. succeeded, being very young, having froward Uncles, who were so popular that they made him very jealous of his Prerogative.

I will not alledge such precedents of his time, as prove that the Commons argued and propounded matters contrary to his Prerogative; (for they are many) But onely observe how that King did in the latter end of his reign, take notice of the Commons consultations in matters concerning the same.

The first happened in the Parliament, *As xx. R. 2.* when the King had mastered his Uncles, and became absolute.

In this Parliament *Sir John Bushe*, one of the Kings Minions being Speaker, a Bill was exhibited to the Commons, that the great and excessive charge of the Kings House be amended & taken away,
and

and taken away, and against the multitude of Bishops, and Ladies in the Kings House.

No man will doubt but that *Bussie* did presently acquaint the King with this, and it was bruited also at that very time, that the King was displeased with the Commons, for that they intended to dissuade his Majesty from sending certain into *Lumbardy*, whereupon the Commons came before the King, and denyed there was any such speech amongst them: And yet (though this occasion was offered by themselves) the K. took no notice of the Bill touching his House, but willed the Lord Chancellor to tell them, that his Officers should come and confer with them about weighty affairs.

At the Lords return from this conference, the King came into the Parliament House, and told the Lords that he understood that the Commons had (in this conference) handled some matters against his Royal Estate and Liberty, and commanded the Lord Chancellor to declare the same. I Where-

Whereupon the Lord Chancellor declared Four Bills, propounded by the Commons, whereof the fourth and last was the Bills touching the excessive charge of the Kings House, &c. which onely displeased his Majesty, and he was highly offended that the Commons who are his subjects durst presume of any Ordinance, or government of the Kings House and Person, which he commanded the Lords to tell the Commons, and to charge the Speaker to declare his name, that exhibited the Bill: And *Harey* was condemned for a Traytor for that Bill.

By this you may see how the K. did cast about, to have this matter related unto him in the upper house; neither can it appear by any ancient Record, that the King did take notice of any of the Commons speeches, or consultations, until they were reported unto his Majesty in open Parliament.

The next precedents are of *H. 4.* which are not much to be stood upon, because he was an Usurper;

And

And therefore it behoved him to affect the love of his Commons in his time : *Annis 7. & 8.* The Speaker told him plainly in open Parliament, that his House was far more chargeable, but less honourable then any of his Progenitors, and it was well taken by the King, whereas *Haxey* was condemned for a Traytor, for a lesse matter then under *R. 2.* yet some precedents of his time do plainly prove the ancient priviledges of the Commons : And therefore I will recite those Laws onely.

Anno 2. H. 4. No. 11. The Commons petitioned the King, that he would not suffer any Report to be made unto him of any matter either moved or debated amongst them untill they be concluded, nor give them any credit ; whereunto the King assented.

Anno 9. H. 4. No: 12. It is plain that the King is not to be told of any thing in communication with the Commons, until it be declared by themselves, which was declared to be so upon this occasion ; The

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Lords sent for certain of the Commons, and told them what Subsidy they thought fit to give the King, and wished them to tell it their Companions, and to advise them to yield thereunto; unto which the Commons did justly take exceptions, and made complaint thereof unto his Majesty, and thereupon it was declared and agreed, that it is lawfull for the Lords to commune of the Subsidies by themselves: But neither the Lords nor the Commons are to make report thereof unto the King before they agreed: And then the same is to be declared by the Speaker in the manner accustomed. *Vide Chartam de immediat. in Scheda ibidem*, If the King might not take notice of the Subsidy (about which the Lords and Commons did often confer) and being agreed, made an Indenture thereof; much less might any thing else moved amongst the Commons be reported unto his Majesty, before the Commons were fully agreed thereon, and declared the same by their Speaker, or otherwise

wife, either unto the King or Lords.

The third Petition is for freedom from Arrests.

This Petition was never made untill of late dayes, yet this privilege did ever belong to the Lords and Commons, and to their servants also coming to the Parliament, staying there, and returning home.

Anno xviii: Ed. 1: Bogo de Clare, and the Prior of *Holy Trinity* in *London* were complained of, for that the said Prior (by procurement of the said *Bogo*) had cited the Earl of *Cornwall* in *Westminster Hall*, in Parliament time to appear before the Lord Arch-bishop of *Canterbury*, &c. whereupon they were sent for (*ad respondendum Domino Regi, & Petro de Chamen Seneschallo Regis, Walter. de Fa e Court Marefchallo Regis, Domino Edward. Comiti Cornubie & Abb. de Westminster: (eo quod dicta Aula est infra libertates Domini Abbat: They appeared and submitted themselves to the King, whereupon they were sent to the Tower of London, (Postea*

venit predictus Bogo & fin. fecit, Domino Regi pro predict. transgressionem per duas Mille Marcas libras pro transgressionem sibi facta, & c. Vide Placita Parliamenti Anno xvij. E. 1. in an old Manuscript in the Tower, and in the Plea Rolles in that year also, there is a Petition of the Master of the Temple, to have leave to distrain for the Rent of a House in London, (held of him by the Bishop of St. Davye) for that he could not distrain Tempore Parliamenti. The answer is, Non videtur honestum quod Rex concedat, & c. Tempore Parliamenti, sed alio tempore distringat, & c. And E. 2. sent his Proclamation to the Justices of Assize, quod supersedeant ubi Barones & alii Summoniti Ad Parliamentum Regis sunt presentes, Vide Clause Anno 7. E. 2. Membr. 28. & Annis 8. E. 2. Membr. xxvij. & Annis vij. & E. 2. Membr. xxi. & xxij.

But these Precedents prove the priviledges of the Lords onely, the next shall of the Commons also, and their servants.

Ann.

Anno 5. H. 4. No.7. inter Petitiones Communium (viz.) Item, pray the Commons, that whereas according to the Custom of the Realm, the Lords, Knights, Citizens, and Burgessees, coming to your Parliament at your command, staying there, and returning to their Countries, and their men, and their servants with them in the said Parliament, under your special protection and defence, and ought not for any debate, trespass, or other contract whatsoever, to be arrested, or any way imprisoned in the meantime; and now so it is, that many such men coming to your Parliament, and others their men, and servants during the said Parliament have been arrested by them, who had full knowledge that they so arrested were of the Parliament as aforesaid, In contempt of your Majesty, great damage of the party, and delay of the business of the Parliament: May it please you to establish, That if any hereafter do arrest any such man coming to your Parliament, as aforesaid, or any of

their men, or servants remaining with them in the said Parliament, or any thing attempt contrary to the Custom.

He shall make fine and rancome unto you, & render treble damages to the party grieved, *R. T.* as sufficient remedy in the like Case. I have translated this Petition, or Bill exhibited by the Commons, *Ad verbum*, out of the Original: By this you see who are priviledged (*viz.*) The Lords, Knights, Citizens, and Burgeesses, and their servants coming to Parliament, staying and returning.

The Petition is to have the contemners of this Priviledge punished by Fine and Ransome to the King, & treble damages to the party grieved, had sufficient Remedie.

What Remedy this was doth appear by the Earl of *Cornewalls* case, *Anno xvij. Ed. iij.* (*viz.*) that the party contemning the priviledge of Parliament is to be committed to prison, to make Fine and Ransome to the King, to render to the party grieved damages, as the

Lords

Lords of the Parliament shall award ; And to answer the Kings Steward and Marshall, if the contempt be committed within the Verge, for the wrong done to them, which is a greater punishment then the Commons required ; And happily they know it not.

But this being the ancient Custom, and done by Prescription, The Lords thought it more honourable to retain it, then to Enact a new Law to punish the contempters of their priviledges, as if they had not been otherwise able to do it of themselves, or had no Remedy before, but were subject to scorn and contempt.

As the offender was punished, so the party arrested was set at liberty : And this was so notorious, that the Commons (at that time) desired no redresse therein by their Petition.

It rests to shew how the party so arrested, was set at Liberty, which shall follow : but here first occurs another Petition of the Commons, touching assaults during the Parliament, (*viz.*)

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Eodem Anno 5. H. 4. N^o 78. I-
tem, pray the Commons, that where-
as all Lords, Knights, Citizens,
and Burgesses, and their servants
comming to Parliament by the
Kings Writ, in coming, staying,
and returning, are under your pro-
tection Royall, and many mis-
chiefs and Impeachments do often
happen unto the said Lords,
Knights, Citizens, and Burgesses,
and their menial servants at those
times, As by Murther, Maimes,
and Batteries, by people lying in
waite, or otherwise, for which, due
remedy is not yet provided: And
namely and particularly in this pre-
sent Parliament, An horrible Bat-
tery, and mischief is committed up-
on *Richard Chedder Esquire*, who is
come to this Parliament with Sir
Thomas Brooke Knight one of the
Knights for the Countie of *Somer-*
set, and meniall with him, by *John*
Sallage, otherwise called *John Sa-*
vage, whereby the said *Richard*
Chedder is Emblemished and mai-
med even to the peril of death. That
it would please you to ordain upon
this

this matter, sufficient remedy, and for other such causes semblable, so as the punishment of him may give Example, & terror unto others not to commit the like mischief in time to come; (that is to say) if any man shall kill, or murther any that is come under your protection to Parliament, that it be adjudged Treason, and if any do maim, or disfigure any such coming under your protection, that he lose his hand; and that if any do assault or beat any such so come, that he be imprisoned for a year, and make fine and ransome, to the King: And that it would please you of your special grace hereafter to abstain from charters of pardon in such cases, unless that the parties be fully agreed.

R. for that the deed was done within the time of this parliament, let a proclamation be made where the deed was done, that the said *John Sallage* appear, and render himself into the Kings Bench within a quarter of a yeare after the proclamation made: And if he doth not, let the said *John Sallage* be attainted:

tainted of the said deed, and pay unto the partie endamaged his double damages, to be taxed by the discretion of the Judges of the said Bench for the time being, or by inquest if need be, and make fine and Ransome at the Kings Will ; & so likewise let it be done in time to come in like cases.

Thus far the petition of the Commons with the answer, *vide* the printed book how the statute is drawn up, upon this petition and answer, & *vide Rot. Claus. (An: eodem constat)* that the said John Sallage did yield himself according to the Proclamation.

This petition and answer may be compared to the former (*viz.*) that the Lords would not *discedere* from the remedy due anciently by prescription, which they had for faults as well as for arrests, only they agreed to the Commons herein to provide for him, that could not be apprehended after the fact done.

An. 23. H. 6. No. 41. inter petitiones communium, the Commons pray,

pray that every person being of the Lords house, or of the house of Commons, having any assault or affray made upon them at the Parliament, or coming or going from thence, may have the like remedy therefore as Sir *Thomas Parrhad.*

R°. The statutes therefore made shall be observed : it should seem the Commons had forgotten the statute made 5 h. 4.

Concerning a Commitment of a Peer of this Realm in the time of Parliament.

THE Earl of *Arundels* case in a Parliament of the 6th of February *An. 1 Caroli Regis*, will fully satisfie this point ; and therefore I will add it here at large.

The 14. of March *An. 15. 25.* The Earl of *Arundel* being committed by the King to the Tower of *London*, sitting, the Parliament House was moved to take the same into their consideration, and so to proceed therein as they might give

182 *Prolocutor Domus Communis. Cap. 7*
no just offence unto his Majestie, and
yet preserve the priviledges of Par-
liament.

The Lord Keeper of the great
seal thereupon signified to the house
that he was commanded to deliver
this message from his Majestie unto
their Lordships (*viz.*) that the Earl
of *Arundel* was restrained for a
misdemeanor, which was personal
to his Majestie, and lay in the pro-
per knowledge of his Majestie, and
had no relation to matters of Parli-
ament.

Whereupon the house was put
to a Committee, and being resu-
med, the Lords Committees for
priviledges, &c. were appointed to
search for precedents concerning
the Commitment. And the Lord
chief Justice, Mr. *Justice Dodde-*
ridge, and Mr. *Justice Telverton*
were appointed to attend their
Lordships:

To meet when they please, and
to report when they were ready
for it, and their Lordships think fit,
for the consideration of the house.

The 25 of *March* 1625 the Lord
Trea-

Treasurer delivered a message from the King in *hæc verba* (*viz.*)

Whereas by a motion *Priviledges.* made by one of your Lordships, the Lord Keeper did yesterday deliver a message from his Majestie, that the Earl of *Arundel* was restrayned for a misde-meanor which was personal to his Majestie, & lay in the proper knowledge of his Majestie, and had no relation to matters of Parliament: his Majestie hath now commanded me to signifie to your Lordships, that he doth avow the message in sort as it was delivered to have been done punctually according to his Majesties own direction: And he knoweth that he hath therein done justly and not diminished the priviledge of that house.

And because the Committee appointed yesterday to search for precedents, &c. had not yet made any report to the house, therefore direction of this business was suspended for this time.

The 5. of *April* the Earl of *Hartford* made this report to the house.
(*viz.*)

Earl of
Harisford
Report.

(viz.) the Lords Committees for priviledges met on Munday last.

The first question that did arise amongst them was, whether that proxies are of any validity which are deputed to any Peere who sitteth not in Parliament himself, and it was conceived that those votes were lost; whereupon the Committee found this trust to be deprived of five suffrages, by the absence of the Earl of *Arundel* unto whom they were entrusted; and the Committee finding by the Journal book that the Sub-committee (which was appointed to search for Precedents for priviledges concerning the Commitment of a Peer in time of Parliament) had not yet made report to this house; they therefore conferring their notes of precedents together whereof they had made search, they have found no one Peer to have been committed (the Parliament sitting) without tryal, or judgment of Peers of Parliament, and that one only precedent of the Bishop of *Winchester*,
in.

in the book Case of King E. 3. which was here urged, cannot be proved to be in Parliament time: and this the Lords of the grand Committee thought fit to offer to the consideration of the House.

Hereupon the House was moved to give power to the Lords sub-Committees for priviledges, &c. to proceed in the search of precedents of the Committment of a Peer of this Realm during the time of Parliament: and that the Kings Council might shew them such precedents as they have of the committment of a Peere during the time of Parliament. And that the said sub-Committee may make their report unto the House at the next access.

All which was granted and agreed unto, and these Lords were added unto the said Committee (*viz.*)

The Lord Treasurer.

The Lord President.

The Duke of *Buckingham*.

The Earl of *Dorset*.

The Earl of *Devon*.

The

The Earl of *Clare*.

The viscount *Wallingford*.

The Lord *Nor:th*.

The Viscount *Mansfield*.

The Kings Council are appointed to attend the Lords, they or any five of the said sub-Committee to meet on thursday in the *Easter* weeke, at two of the clock in the painted Chamber, and afterwards when they please.

*Rep:ris
of the sub-
committ-
tees for
priviledges.*

The 18 of *Apr.* 1626 The Lord president reported the proceedings of the Lords Sub-Committees for priviledges, &c. upon the Comittment of the Earl of *Arundel* (*viz.*) that the Kings Council had searched, and acquainted the said Lords Sub-Committees withal, that they had found in Records, Chronicles, and Stories concerning this matter, unto which the said Lords Sub-Committees had given full answer, and also shewed such Precedents as did maintain their own rights: all which followeth in *hac verba*, &c. (*viz.*)

Touching

Touching Imprisonment or restraint of Lords in time of Parliament.

Under E. 1. the priviledges of the Lords of Parliament was such, that although the power of the Church was so great, that it pretended to be scarce less then the highest temporal power; yet when *Edward Duke of Cornwall* in Parliament time was by it cited by a process from the Arch-Bishop of *Canterburie*, which was far less then any imprisonment, he recovered 1000 marks Damages against *Bogo de Clare*, that procured the citation, and both this *Bogo* and the Pryor of *Sanct. Trinity* that served it, were fined in great sums to the King for the contempt also against him in the citation.

The Case of the Arch-bishop *Stafford*, in the 15 E. 3. is observable here, it appears that though he were commanded to stay from the Parliament untill he had answered certain Articles in the Echequer

Exchequer touching accompt, yet by a dutifull standing on his right, he did get his place in the House, and so sensible were the Lords of that breach of their priviledge in that restraint of this Arch-Bishop, that they declared that none of them ought to be questioned but in Parliament, and to that purpose also an Act passed that year, though with the rest of that year it now stands repealed.

Between the Parliaments of 50 and 51 E. 3. *William Wickham* Bishop of *Winton* was called to an account for divers monys that he had received of the King, and some other matter, and his temporalities were seised, and by command of *John Duke of Lancaster* in the Kings name, he was not to come neer the King by twenty Miles: This was in *Michaelmas* Term 50 E. 3. in *Hillarii* 51 a Parliament was held where the Bishops and the Clergy that then were a third state of the Parliament (as they are called frequently in the ancient time) being present, to give the

PH
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the King a supply, made their complaint to the Arch Bishop of Canterburie as the chief of them (*de injuria illata eorum confratri & Corpor. Domino Episc Winton, & quomodo non solum sibi met sed omnibus illis est & toti libertati Ecclesie derogatum, unde constanter asseruerunt se de instantibus Negotiis nullatenus effectualiter tractaturos donec quoad uniantur singula Cleric. membra; affirmant reuereri instans negotium cum illis communicetur tangere, & quod omnes tangeret debere ab omnibus approbati.*) And although the Arch-Bishop willing to have declined the meddling with their suite; (being on the Dukes partie) yet he was so far urged by them, that at length he sent for him to come and take his place amongst them, as he did also; notwithstanding no writ of Summons appear to have bin sent to him by that Parliament, the presence of all the Lords was thought by the house of Commons to be so necessary, and a matter wherein they had such interest, that they desired that all
the

the Lords that were absent might be sent for : But it was answered, that it would be too long a delay of the Parliament, but such as were neer should be sent for : The Lord Grey of Ruthin being imprisoned by Owen Glendor of Wales, the Commons conceived they had so much interest in the presence of every Lord there, that they petitioned the King to give the Lords of Roose, and Willoghby, leave to provide his ransome, which was 10000 Marks, which was granted.

A bill passed both the houses in the 5. h. 4. wherein it is affirmed that according to the Custom of the Realm, the Lords, Knights, Citizens, and Burgeses and their servants coming to the Parliament, and there staying and returning home again, ought not to be arrested or in any manner imprisoned in the mean time for any debt, accounts, trespass, or other contract whatsoever. It was desired, that if any did offend against the priviledge, he should suffer fine and ransom, and pay treble damages : But the Kings Answer

swer is, that they had sufficient remedy in *le vas*, for there was no doubt made of the Priviledge, though a desire were, of a greater Remedy then the law had yet provided :

The Commons the 8 h. '6. in their bill for *Lark* a servant of Mr. *Milred* a Burgesse of Parliament (which passed both houses of Parliament) affirm, that the priviledges of Parliament were clear that no Member was to be arrested in Parliament-time, But for Treason, Felony, or surety of the peace.

It was resolved, upon great advice, 31. H. 6. that no member was to be arrested, saving in cases of Treason, Felony, breach of the Peace, or upon a condemnation had before the Parliament, which (as the Law is to this day) must be understood of an arrest of a Commoner, upon an execution before his time of priviledge in Parliament: in the xxxiiij. H. 8. The King himself in his speech touching *Ferrers* Case (that being a Burgesse was taken in Execution) but discharged
by

by Order of the Commons House) saies that his learned Council had enformed him, that all Acts and Proceffe, coming out of any other inferiour Courts, must for the time cease, and give place to the Parliament, as the highest; and that whatsoever offence or injury is in Parliament-time offered to the meanest Member of the House, is to be adjudged as done both against the King, and the whole Court of Parliament.

And the chief Justice Sir *Edward Mountague*, and the rest of the Judges, confirmed with divers reasons all that the King said to that purpose.

Touching a Lord at the suite in the *Star-Chamber*, for a contempt or ryot, &c. yet the suite is to be stayed, &c. by priviledge Parliament-time.

Precedents alledged by Mr. Attorney Generall, to prove, that a Lord of Parliament may be committed in Parliament time, for a personal Offence done to the KING, though it be neither Treason, Felony, or breach of the Peace.

P*hilip Earl of Arundell, was committed, and not for Treason, sitting the Parliament, Anno 28. Eliz. For which Mr. Attorney cites Cambden in the first part of his History of Queen Elizabeth.*

This Parliament began the 39. of *Octob.* on which day the Earl was not present; *ultimo die Octobris* he was present, when the Speaker was presented, and then the Parliament continued unto the 4th. of *November* following, and then the said Earl was not present, nor the 5. 7. 8. 9. nor 10th of that *November*, though his name is inserted in the list of the Lords.

All the other days of that Session, which continued to the 2d. of *December,*

K

ember, the said Earls name is omitted; and then the Parliament is continued till the 15th. of *February* following, on which day the Parliament began again, and in all that *Journall* the said Earls name is omitted.

Answers to the Precedent alledged by Mr. Attorney in the Earl of Arundels Case, 28 Eliz.

Ans. 1. *C* *Ambden*, out of whose *Annals* the Case is cited, saith expressly, that after the Parliament was ended, the Earl proposing to go beyond the Seas, wrote a long Letter to the Queen, complaining of the malice of his Enemies, and of the misfortune of some of his Ancestors that had suffered in this state, and touching also the liberty and exercise of his conscience which he meant to gain himself in other Countreys where the Roman Catholique Religion was exercised; which Letter he meant should have been delivered after his passage

sage over: But his purpose being discovered, he was taken in *Sussex* while he was entering on his Journey, and thence brought back, and thence committed to the Tower: And for the omitting of his name in the Journall book, on many dayes of the Parliament of 28 *Eliz.* that is no proof at all of his being committed in the time of Parliament, for there are omissions of Lords names in divers days of the Journal very frequently, when yet without question they were committed.

The Earl of *Hertford* was committed to the 2 *Preced.* Tower by Qu: *Eliz.*

Anno. 5.

That the commitment was in Parliament time, he alledged, that the Parliam. began the 22. of *January*, Anno 5 *Eliz.* and continued untill the 10th. of *Aprill*, thence prorogued to the 2d. of *October*, thence by many prorogations unto the 30 of *Septemb.* Anno 8. *Eliz.* and averred that the said Earl was

K 2 committed

196 *Prolocutor Domus Communis*, Cap. 7.
committed (not for Treason, &c.)
during the prorogation. To prove
this, he cited *Cambdens Annals* in
English.

The Earl of Hartfords Case,
Anno 5 Eliz.

Ans. 2. **T**HE Earl of *Hertford*
was committed long
before the 5. of *Eliz.* as appear-
eth by *Cambdens Annals*, where he
placeth both his commitment, & his
censure in the Star-chamber about
the beginning of 1562. that is in the
4th. of *Eliz.* beginning not till the
22th. of *January*, it is plain that he
was both committed, and censu-
red.

Fisher Bishop of Rochest. 3 *Preced.*
committed in Parlia-
ment time, *Anno 25 of H. 8.* for his
opinion to maintain the Popes su-
premacy, which was not Treason
by statute untill the year following:
For this he cited *Martins Chroni-*
cle, Vide Parl. Anno 25 of H. 8.
that the said Bishop of *Rochester*
was not present all that Parliam.
as appeareth by the Journal. *The*

*The Case of Fisher Bishop of
Rochester, Anno 25 H. 8.*

THis Bishop, though all were granted to be true that *Martin* faith of him, was not committed in the time of Parliament.

But after the Parliament ended, and that both for misprision of Treason, and for Treason.

First, one of his offences is supposed to have been the denying to take an oath of Supremacy ordained by the statute of 25 H. 8. Cap. 222. for the defence of that Act, the refusall whereof was misprision by the same Act,

But the first time this Oath was offered to any man, was the very first day of the Parliament, that is the 30th of *March* when the Form of it was made, and remains yet in the Journall of that year, so that his refusall of that Oath must be either on the very last day, on which it seems it was not: Because he is not mentioned in the Journal to have been there present, or after

the end of the Parliament; for before that time never was any man put to swear that Oath.

Secondly, to this offence is added in *Martin*, that he contested, and protested against the Act of Parliament touching the dissolution of the Marriage of the Queen *Katherin*, and the confirmation of that with Queen *Anne*, for which he was committed, and suffered as a Traytor: But untill a moneth after the Parliament, it was not treason to do any Act against the second Marriage, as appeareth in the body of that statute: And after the moneth ended, that is from *May* following, it was by that statute made Treason to do any Act in derogation of it: so that neither his misprision of Treason, nor his Treason for which *Martin* saith he was committed, nor his commitment could fall in the time of the Parliament; nor doth *Martin*, nor any other say so, nor doth the Journall that hath not his name in that parliament prove any such matter, for in that very Journall divers Lords names are often.

ten omitted, that no man can conceive stood there at that same time committed, yet perhaps there was reason enough to have committed him in the Parliament time also, for he stood then very much suspected of Treason, as we may see by the Act of the said Parliament, wherein he was attainted of misprision of Treason.

But the truth of the Case is, that the Relation of it in

Martin is false here 25 *H. 8. c. 4.* as it is delivered, &

divers mistake it, that wrote before him, this Bishop was not condemned that year at all, for ought appears not committed, but in 26 *H. 8.* he was attained by Act of Parliament of misprision for refusing the oath, and thereupon committed; and in the 27th. year of *H. 8.* he was attainted for speaking trayterous words against the Stat. of 26 *H. 8. Cap. 13.*

An. 28 H. 6. the Duke of *Sussex* 4 Precedents
folk being accused by the Commons
of Treason, put himself upon the
Kings grace, and not upon the
L. 4 Peers,

Peers, and the King alone judged him, but required that a protestation might be entred to save the priviledge of their peerage.

The Duke of *Suffolks* Case, in
Anno xxviii. Hen. 6.

IN that Case, for so much as concerns Commitment, (which is the onely question now agitated) it appears expressly, that when it was in question, (before the particular accusations that the Commons put up against him) whether he should be committed by reason of a general fame raised against him, the Lords onely determined, that he ought not yet to be committed.

Rot. Par-
liament,
18 H.6.
Act. 16.

Afterwards the Commons accused him in particular, that by his Invitation, the French King was ready to invade the Realm. At the request of the Commons, it is said he was committed to the Tower; but the Roll mentions not by whom: But howsoever, there is nothing in that Proceeding concerning Commitment, that shews he was

at

at all committed for any less offence then Treason. And before the charge of Treason laid against him, the Lords alone determined, whether he should be committed or no. Afterwards, the Commons put in two bills of Accusation against him, one of divers Treasons, the other of offences of like nature. And he is by Writ brought from the Tower to answer; and then desires copies of the accusations, which are granted him: And the King, by advice of all the Lords, then committed him to the Award of three Esquires, to be kept in a Tower at *Westminster*.

Ibid. 48.

Now for the Kings judging of him in time of Parliament, which is the point objected, the Case goes on thus:

The 13 of *March*, which was four days after, he made his answer to divers particulars, the King and the Lords sitting in Parliament.

The 14 being *Saturday*, the Chief Justice, by the Kings commandment, remembered all the Lords of what was done the day before in

Ibid. Act. 50. 52.

this matter, and asked, what advice they would therein give to the King. At which time they deferred their advice until the *Munday* following: But on *Munday* following nothing was done; and on *Tuesday*, the King sent for the Lord Chancellour, and all the Lords that were in Town, to his Palace at *Westminster*; and when they were all assembled, he sent for the Duke also, who came and denied divers of the offences, and submitted himself wholly to the Kings Rule and Government, to do with him as he list.

Thereupon the Lord Chancellour, by the Kings Commandment, told *Ibid. Añ. him*, That he conceived that the Duke not putting him on his Parage, had submitted himself wholly to the Kings Rules and Governance; wherefore touching the *Treason*, the King held him neither clear nor guilty. And touching the other offences, the King by force of his submission (as the words of the Roll are) by his own advise, and not reporting him to the advice of

of his Lords, nor by way of Judgement (for he is not in place of Judgement) putteth you to his Rule and Governance (that is to say) that you before the first of *May* next coming, shall absent yourself out of this Realm of *England* for five years, &c.

And instantly upon this so sayed by the Chancellour, the Viscount *Beaumont* on the behalf of all the Lords, and by their advice, assent and desire, declared, That this that was so decreed and done by him, concerning the person of the said Duke, proceeded not by their advice and counsel, but was done by the Kings own Demeanance and Rule, and desires that this may be entred in the Parliament Roll, with this Protestation, That it should not be, nor turn in prejudice nor derogation of them, or their posterity; but they may have, and enjoy their liberty and freedom in case of their Parage hereafter, as freely and largely as ever they, or any of their Ancestors or Predecessors had and enjoyed before his time.

Upon

Upon this it is now objected, that the King here judged him, and the Lords demanded him not. But it is first plain, that it is no judgement at all. The Chancellour says expressly, it was neither by way of judgement, nor in place of judgement.

Secondly, A judgement could not be so given against him; neither was it any legal banishment; for by the ordinary course of the Common Law, there is no punishment by banishment; and that which hath been in examples, hath been by judgement given in Parliament; as appears in that famous case of the Dukes of *Hereford* and *Norfolk*,

under R. 2. and others at that time. And for the Lords demanding him, there was no need at all or colour why they should have demanded his person, for he was not restrained from them. He was extrajudicially bid absent himself, onely out of the Kingdom, and of his own will to obey the King; which while he was about to do, he was taken upon the Sea, and there slain; and
for

Ro. Ju-
dic. 2.

R 1 part.

5. A. 18.

Ro. Ju-

dic. 1.

2. &c.

for the matter of judgement & proceeding against him, which should otherwise have been before the Lords against him, they sufficiently saved their right, by protesting first, that all that was done to the Duke by the King, was onely by the Kings own Demeanance and Rule, and that this should not prejudice their right of Parage, or their (*Jus Paritatis*) which is their right of judgement as Peers, as it is called in the Protestation of the Clergy, when they left the house, because they would not be party to the judgement of blood, in the 11 R. 2.

Anno 8. H. 6. the Commons petitioning for the discharge of *William Lark*, arrested in Execution during the Parliament, and that the King would be pleased also to ordain, That no Lord, Knights, Citizens and Burgeses, nor their servants, coming to the Parliament, may be arrested during the Parliament, unless it be for Treason, Felony, or breach of the peace. The King granted the first part of their petition, but (*quant ad Remnant le Roy s'adviseira.*) P. ced. 5.

The

The Case of Lark. Rot. Parliament, Anno 7. H. 6. n. 39.

Ans. **T**O this the Answer is full, that the latter part of the Bill doth comprehend more then it was fit the Royal assent should have been given unto, and more then was, or at this day is the Law of Parliament.

For it is, that no Member of either House, be arrested or detained in prison during the Parliament, saving in these three cases. To be arrested, is to be taken with Officers by Process, or otherwise.

To be detained in prison, is to be detained after an Arrest, though in truth it be none: So that the Bill is desired, not onely that none should be arrested or detained upon Arrest during the Parliament, which is the onely priviledge supposed in the body of the Bill; but also, that none should be detained in prison during the Parliament; whereas there is no doubt, but that any of the House of Commons, or their servants, or the servants

servants of Lords being detained in prison, upon an Execution served upon them, before the time of privilege of Parliament; or being in Execution by any other ordinary course of Justice before that time, ought to be detained still, as it is practised still at this day. And accordingly also a fourth Limitation is added to those three in the 13 *H. 6.* in *Thorps Case*, where Treason, Felony, Surety of the peace, and condemnation before the Parliament, are the causes excepted; so that there being more asked by the Bill, then the privilege of Parliament allowed, there was reason enough why the King assented not unto it.

And 1 *H. 4.* the Bishop of *Car-* Preced.
lisle was arrested by the Lord Mar- 4.
shal in Parliament time, and not for Treason &c. for he was committed to the Abbey of *S. Albans*, which was no prison for Traytors.

*The Commitment of the Bishop of
Carlisle in Parliament An. 1 h. 4.*

Answer. **T**HIS Bishop was committed for as high treason as could be uttered, for he expressly denied *H. 4.* to be a King in open Parliament, And for this being committed to the Abby of Saint *Albans*: that or any place without question at the pleasure of the King was a prison for Traytors as well as others.

7 *Presi-
dent.*

An. 5. h. 4. the Lords of Parliament claimed their priviledge to judge the Earl of *Northumberland* in respect of the statute of 25 *Ed. 3.* and not in respect of Priviledge of Parliament.

The Earl of Northumberlands Case

Anno 5. H 4.

7 *Answer.* **T**HE Lords in that Case expressly claim and exercise their right of judgment both in matter of treason, and then the statute against liveries; there-
upon

upon they judge the Earls offence not to be Treason nor Felony, but they judge also that it was trespass only, and for that they judge also that he ought to make Fine and Ransom at the Kings will; so that upon the one statute as Judges in Parliament, they judge the fact to be no treason, and the iteration of their being Judges of Parliament, in this Case in the Roll is an expresse mention and claim of their privilege also.

An. 15. E. 3. the King denied the Arch-Bishop of *Canterbury* to⁸ *Pieced.* come into the Parliament house until he had answered certain Answers objected against him in the Exchequer, and then also the King denied his entrance, yet at last at the intercession of the Lords he was admitted.

For this Mr. Attorney cited *Mathew Parker de Antiquitate Ecclesie Brittanica.*

The Case of the Arch-Bishop of Canterbury Stratford An. 15 E. 3.

*Antiqui.
Ecclesia
Brit. &
Godwin in
vita ejus.*

8 Answer. **I**T is true that the King denied him sometimes to come into the house untill he had answered those Articles, but he did as upon challenging of his right as a Peer, and a Baron of the Kingdome, come in before he had answered them, and so well he understood the right of *Pairalety*, that though the Parliament-House doore was shut against him, where he was kept out by violence, he yet stood there, and professed he would not thence until he was either suffered to come in, or else some cause were shewed why he should not; and what the Lords thought of his being kept out of the house, or questioned in any other Court sitting the Parliament may appear in the Roll of that year, where while he was kept out, they desired the Law to be declared touching questioning of Peers in any other Court but in Parliament, and thereupon a Committee of 12 Lords.

Lords was made to examine in what Case Peers should be found to answer in Parliament & not elsewhere. And the Committees report is general (*que lez Paires de laterre ne devient estre arestiez mesnez in judgment si non en Parliament et per leur pairres* : And the same day that this was reported, the Arch-Bishop came into the House, where he desired of the King that he might be tried, which the King granted.

An. 3. E. 3. Termino pasce. the Bishop of Winchester was indicted in the Kings bench for departing ^{9Preced.} from the Parliament at *Salisburie*.

The Case of the Bishop of Winchester
Anno. 3. E. 3.

Answer. **T**His was the same *Stratford* that was Arch-Bishop of *Canterburie*, and in that Case of 15. *E. 3.* but it is plain that the whole proceedings against him was after the Parliament from whence he departed : The Parliament was kept at *Salisburie* (not *Salop*)

212 *Prolocutor Domus Communis. Cap. 7.*

Salop) as it is false printed in the year books, and beginning in *quinden. Michaelis* it ended 31 *Octobris* following as appears by the Writs for levying the expences of the Knights and Burgesſes.

Dorsclaus
An. 2 E. 3
Memb. 15

And the next Parliament is ſummoned by Writ dated the 14 of *June* 5. *E. 3.* now *E. 3* began his Raign the 25 of *January*, ſo that from the 31 *October* in the 2 *E. 3.* to the 14 *Junii* in 3. *E. 3.* there was neither Parliament held nor any ſummons ſent forth; in that time falls *Eaſter Term* wherein the Biſhop of *Winton* was queſtioned in the Kings bench, as appears both in the year book, and the Roll of the *Caſe*; ſo that it proves nothing at all to the point in queſtion, being done out of Parliament.

Dorsclaus
An. 2. E. 3
Memb. 19
Pafch 3E
3. fol. 9. &
Pfach. 3E
3. Coram
Rege &
RexMem

This being read, it was agreed upon by the whole houſe (*nemine diſſentiente*) that the priviledge of this houſe is, that no Lord of Parliament, ſitting the Parliament or within the uſual times of priviledge of Parliament, is to be imprifoned, or reſtrained without ſentence or

Question

or-

order of the house, unless it be for Treason or Felony, or for refusing to give surety of the peace.

And it was hereupon ordered that the said Lords sub-Committees for priviledges &c. or any five of them shall meet this afternoon to consider of a remonstrance of the priviledges of the Peers of Parliament, and of an humble petition to be made unto his Majesty to enjoy the same. Order. J

The Lord President reported the Privi-remonstrance and petition of the ledges Peers concerning the claim of their of Peers. priviledges from Arrests and Imprisonments during the Parliament, which was conceived by the Lords Sub-Committees of priviledges according to the order of the house 18 of *April*, the which was read 1. & 2. *vice in hac verba* (viz.)

*The Remonstrance and Petition
of the PEERS.*

MAY it please your Majesty, we the Peers of this your Realm now assembled in Parliament, finding

ing the Earl of *Arundel* absent from his place, that sometimes in this Parliament sat amongst us, his presence was therefore called for; but hereupon a message was delivered unto us from your Majesty by the Lord Keeper, that the Earl of *Arundel* was restrained for a misdemeanor which was personally to your Majesty, and lay in the proper knowledg of your Majesty, and had no relation to matter of Parliament: this message occasioned us to enquire into the acts of our Ancestors, and what in like cases they had done, that so we might not err in any dutiful respect to your Majesty, and yet preserve our right, and priviledge of Parliament: and after diligent search both of all stories, statutes and Records that might inform us in this case, we find it to be an undoubted right and constant priviledge, That no Lord of Parliament, sitting the Parliam. or within the usual times of priviledge of Parliament, is to be imprisoned or restrained (without sentence, or order

der of the house) unless it be for
Treason or Felony, or for refusing
to give security for the peace; and
to satisfy our selves the better,
We have heard all that could be
alleged by your Majesties lear-
ned Councel at law, that might a-
ny way infringe or weaken this
Claim of the Peers and to all that
claim be shewed and alleaged, so
full satisfaction hath been given
as that all the Peers in Parliament
upon the question made of this
priviledge, have *una voce* consen-
ted that this is the undoubted right
of the Peers, and inviolably have
been enjoyed by them: wherefore
we your Majesties loyal Subjects
and Servants the whole body of
the Peers in Parliament assembled,
most humbly beseech your Maje-
sty, that the Earl of *Arundel* a
Member of this body, may pre-
sently be admitted with your gra-
cious favor to come, sit and serve
your Majesty, and the Common-
wealth, in the great affairs of this
Parliament, and we shall pray.
&c.

This

This remonstrance and petition being read, it was generally approved of by the whole house, and agreed to be presented unto his Majesty by the whole house :

And further agreed, that the Lord President, Lord Steward, the Earl of *Cambridge*, and the Lord great Chamberlain should presently go to the King, to understand his pleasure, when they shall attend him.

And the said Lords being returned, The Lord President reported, that his Majesty had appointed this day between two and three, for the whole House to attend his Majesty, with the said Remonstrance and petition in the Chamber of presence at *Whitehal*.

And it was agreed that the Lord Keeper should then read the same unto the King, and present it unto his Majesty.

The 20. of *April*, 1626. the Lord President thus reported the Kings Answer unto the Remonstrance, and petition of the Lords, delivered unto his Majesty.

My

My Lords;

YE have spent some time in this **The Kings**
 business, and it being of some **Answer.**
 consequence, I should be thought rash,
 if I should give a sudden Answer;
 And therefore I will advise of it,
 and give you a full Answer in con-
 venient time

The xx. of April, 1626. This **Privi-**
 day the House was called, and the **ledges**
 Earl of Arundel being called, the
 Lord Keeper signified to the House
 that his Majesty hath taken into
 his consideration, the Petition exhi-
 bited by their Lordships the xix.
 of April, concerning the Earl of
 Arundel, and will return answer
 thereunto with all expedition.

The 2. May. 1626. it was this
 day ordered the Lord Keeper do **Order.**
 move his Majesty from the House
 for a speedy and gracious Answer
 unto the petition, on the behalf of
 the Earl of Arundel.

The fourth of May, the Lord
 Keeper signified unto their Lord-
 ships, that according to the order

L the

The Kings the second of *May*, he had moved
second his Majesty from the House, on
Answer, the behalf of the Earl of *Arundel*;
upon my who answered, That it is a cause
Lord that he hath had a great deal of
Keepers care of, and is willing to give
Motion. your Lordships satisfaction, and
 hath it in his consideration how to
 do it, but hath been interrupted by
 other businesses, wherein Mr. At-
 torney hath had much occasions of
 conference with him (as your
 Lordships are acquainted) but will
 with all conveniency give your
 Lordships satisfaction, and return
 you an answer.

Privi- The nineteenth of *May*, 1626.
ledges the House being moved to petiti-
 on the King touching the Earl of
Arundel, these Lords were appoin-
 ted to set down the form of the
 said Petition; *viz.*

The Lord President.

The Earl of *Essex*.

The Bishop of *Norwich*.

The Bishop of *Down* & *Lichfield*.

The Lord *Norfolk*.

The Lord *Ruffel*.

The

The Lord Denny.

The Lord Montague.

Who reported the same in writing
as followeth.

May it please your Majesty,

W *Hereas the whole body of* 2. *Petition of the*
Peers now assembled in Par- *Lords.*
liament, did the 19 of April exhibi-
bite to your Majesty an humble Re-
monstrance and Petition, concerning
the priviledges of Peers in Parlia-
ment, and in particular, touching
the Earl of Arundel, whereupon we
received a gracious Answer, that in
convenient time we should receive a
full Answer, which we have long
and dutifully attended, and now
at this time so great business be-
ing in handling in the House,
we are pressed by the business, to be
humble suitors to your Majesty, for
a gracious and present Answer.

Which being read, was appro-
ved by the House, and the said
Committee appointed to present

the same unto his Majesty; from the House, at such time as the Lord *Chamberlain* shall signifie unto them that his Majesty is pleased to admit them to his presence.

The 21. of *May* 1626. the President reported the Kings Answer unto the Petition, from the House touching the Earl of *Arundel* (*viz.*)

My Lords, I did little look for such a Message from the House, I have been of the House, and did never know such a Message from the one House to the other: Therefore when I receive a Message fit to come from you to your Sovereign, you shall receive an Answer.

The Lord President further reported, that the Lords Committees, appointed to deliver the said Petition unto the King, did thereupon withdraw, and required him (the Lord President) humbly to desire his Majesty to be pleased to let them know, unto what poynt of the said Petition he takes this Exception.

And

And that his Majesty willed him the said Lord President to say this of himself, (*viz.*)

The exception the King taketh, is at the peremptoriness of the Termes, (to have a present Answer) and the King wonders at their impatience, since he hath promised them an answer in convenient time,

Hereupon the House altered their former Petition, leaving out the word (present,) and appointed the former Committee, humbly to deliver the same to his Majesty, at such time as the Lord Chamberlain shall signify unto them, when his Majesty will be pleased to admit them to his presence.

The 14. of *May* 1626. The Lord President reported the Kings answer unto the petition of this house concerning the Earl of *Arundel*, (*viz*)

It is true, your word (present) was somewhat strang unto me, because ye do not use it from one house to another: But now that I know your meaning, you shall know.

The Kings answer.

to the
Petition,
as it was
altered.

know this from me, that you shall have my answer so soon as conveniently I can: And this I will assure you, it shall be such an answer, as you shall see I will not trench upon the priviledges of your House.

The 17. of *May*, 1626. Their Lordships being moved to renew their humble Petition to the King from the whole House, on the behalf of the Earl of *Arundel*, these Lords where appinted to draw up the said Petition (*viz.*)

The Lord President.

The Lord Chamberlain

The Earl of *Dorset*.

The Earl of *Devon*.

The Earl of *Mulgrave*.

The Viscount *Saye*, and *Seale*.

The Lord *North*.

Who having penned and reported the same to the House, it was read in *hac verba*, (*viz.*)

May it please your Majesty, the
cause that moves us now humbly
to

to attend your Majesty in one whole body (as at first we did) is because we observe that the house of Commons have speedily received a Member of theirs being committed; we the Peers ambitious to deserve of your Majesty, and to appear in the eye of the World as much respected in our Rights and Priviledges as any Peers or Commons have ever been, acknowledging you a King of as much goodness as ever King was, do now again humbly beseech that the Earl of *Arundel*, a Member of our house, may be restored to us, it so much concerning point of privilege, as that we all suffer in what he suffers in this his restraint; which petition was generally approved of, and ordered to be presented at such time as the Lord Chamberlain shall signify his Majesty's pleasure to admit their Lordships to his presence.

The 19th. of *May* 1626 the Lord Chamberlain signified to their Lordships, that his Majesty is pleased that this house attend him at two

of the clock this afternoon at *Whitehall* the 19 of *May* 1626. his Majesties answer unto the Petition of the house concerning the Earl of *Arundel* the 19 of *May* at *Whitehall* is reported (*viz*) his Majesty is pleased to admit them to his presence.

The
Kings
Answer,

My Lords, I see that in your petition you acknowledge me a King of as much goodness as ever King was, for which I thank you, and I will endeavour by the grace of God never to deserve other: But in this I observe that you contradict your selves, for if you believe me to be such as you say I am, you have no reason to mistrust the sincerity of my promises; for whereas upon often petitions made by you to me concerning this business, I have promised to give to you a full answer with all convenient speed; by this again Importuning me, you seem to mistrust my former promises. It may be said, here is an emergent cause, for that I have delivered a Member of the lower house: in
this

this my Lords, by your favour, you are mistaken, for the Causes do no waies agree; for that he that was committed of the house of Commons was committed for words spoken before both houses, which being such as I had just cause to commit him; yet because I found that they might be words only misplaced, and not ill meant, and were so conceived by many honest men, I was contented upon his interpretation to release him without any fute from the lower house; whereas my Lord of *Arundels* fault was directly against my self, having no relation to the Parliament: yet because I see you are so impatient, I will make you a fuller answer then yet I have done, not doubting but that you will rest contented with that. It is true, I have Committed him for a cause which most of you know, and though it hath been no more, I had reason to do it; yet my Lords, I assure you I have things of greater importance to lay to his charge, which you must excuse me not to tell you at this time, because

it is not yet ripe, and it would much prejudice my service to do it, and this, by the word of a King, I do not speak to delay you, but as soon as it is possible you shall know the cause, which is such that I know you will not judge to be any breach of your priviledges; for my Lords, by this I do not mean to shew the power of a King in diminishing of your priviledges.

Order. This being read again, it was ordered the Committee to meet on Munday next at two of the Clock *Post Meridiem*, and consider how further to proceed with dutifull respect to his Majesty, and yet so as it may be for the preservation of the priviledges of the Peers of this Land, and the liberties of the house of Parliament.

Report. The 24. of *May* 1626 the Lord president reported the petition agreed on by the Lords Committees for priviledges, &c. to be presented unto the King, which was read in *hac verba* (viz):

4 Petition May it please your most excellent Majesty, what ever our care, or desire

desire is to preserve our right of
peerage, yet it is far from our
thoughts either to distrust, or to
presse any thing that stands not with
the affection and duty of most loyal
and dutifull subjects: and therefore
in all humilitie we cast our selves
before your Majesty, assuring our
selves, in that sacred word of a King,
that with all possible convenience,
your Majesty will please either to
restore the Peer to his place in Par-
liament, or expresse such a cause as
may not infringe our Priviledge.

Which was generally approved
of, and ordered to be presented to Order.
his Majesty by the whole house,
and the Earl of *Carlile* and the
Lord *Caleton* to go presently, and
know the Kings pleasure when
they shall attend his Majesty.

Who being returned, repor-
ted that his Majesty had appoin-
ted this afternoon at two of the
Clock for the same.

The 25 of *May* 1626. the Lord
keeper delivered the Kings answer
unto the petition of the house
yesterday at *Whitehall* to be read,
which

which followeth in *hac verba*
(viz.)

The
Kings
Answer

My Lords your often coming to me about this business, made me somewhat doubt ye did distrust me, but now since I see you rely wholly on me, I assure you that it shall prevail more upon me than all importunities, and if ye had done this at the first, I should have given ye content; and now I assure ye, that I will use all possible speed to give you satisfaction, and at the farthest, before the end of this Session of Parliament.

This being read the second time, the house was moved that all business might be layed aside, and consideration might be had how their priviledges may be preserved unto posterity, and the house being put into a Committee for the freer debate thereof, and afterwards resumed, it was ordered the house to be adjourned till to morrow, and all businesses to Cease.

3 Message The 26. of *May* 1626. the Lord
from the Keeper delivered this message
King. from the King, viz. His

His Majesty hath willed me to signify unto your Lordships, that he doth marvail that his meaning in his last answer should be mistaken; and for the better clearing of his intention, hath comanded me to signify unto your Lordships his further answer, which is, that your Lordships last petition was so acceptable to his Majesty, that his intent was then, and he is still resolved to satisfy your Lordships fully in what you then desired.

It is ordered, that all business be adjourned till this day seavennight.

And *memorandum*, that the Duke of *Buckingham* began to signify unto their Lordships, that he would declare his desire to have the Kings Council allowed him to plead his cause: But the Lords would not hear him, because they would entertain no business, and so the house was adjourned to the second of *June*.

Veneris the second of *June* 1626. the Lord Keeper delivered a message from the King in *hæc verba*, &c.

His Majesty hath commanded
me

The
Kings
Message

me to deliver to your Lordships a
Message touching the Earl of *Arundel*, that his Majesty hath
thought of that business, and hath
advised of his great and pressing
affairs, which are such as makes him
unwilling to enter into dispute of
things doubtful, and therefore to
give you clear satisfaction touching
that case, whereby you may the
more cheerfully proceed in the busi-
ness of the house, he hath endea-
voured as much as may be to ripen
it, but cannot yet affect it; yet is
resolved, that by *Wednesday* (which
was the 14 of *June*) sevensnight
at the furthest, he will either declare
the cause, or admit him to the house;
and addeth further, upon the word
of a King, that if it shall be sooner
ripe, which he hath good cause
to expect, he will declare it with
the soonest; and further, that if the
occasion doth him enforce to stay
to the time prefixed, yet he doth
not purpose to set such a short end
to the Parliament, but that there
shall be an ample and good space
between that and the end of the
session, to dispatch affairs. This

This message being delivered, the house was adjourned (*ad libitum*) Order, and put into Committee, and being resumed, it was agreed, all other business to cease, but this of the E. of *Arundels* concerning the priviledges of the house, and the house to meet thereon to Morrow morning, and to be put into a Committee to consider thereof; and so the house was adjourned to the next Day.

Sabathi 3 die junij 1626. The Lord Keeper delivered a message from the King to this effect A Mess.
sage
from the
King.
(viz)

That in the matter concerning the Earl of *Arundel*, his Majesty hath been very careful and desirous to avoid all jealousy of violating the priviledges of this house, that he continueth still of the same mind, and doth much desire to find out some expedient way, which might satisfie your Lordships in point of priviledge, and yet not hinder his Majesties service in that particular; but because this will require some time, his Majesty (though his great affairs are instant and pres-

pressing) is unwilling to urge your Lordships to go on therewith, till his Majesty hath thought on the other; and therefore hath commanded me to signifie his pleasure, that his Majesty is contented your Lordships adjourn the house until thursday next, and in the meantime his Majesty will take this particular business into further consideration: it is agreed the Lord-Keeper render unto his Majesty from the house their humble thanks for his gracious respect unto their priviledges: and then the Lord-Keeper demanded of the Lords whether their Lordships would adjourn the house until thursday: whereupon it was agreed by the Lords, and the house was adjourned, and all businesses to cease, unto the said Thursday.

Jovis 8 die Junii 1626. the Lord Keeper delivered this message to the Lords from his Majesty (*viz.*) that on Saturday last his Majesty sent word to the house, that by this day he would send them such an answer concerning the Earl of
Arundel,

Arundel, as should satisfie them in point of priviledge; and therefore to take away all dispute, and that their priviledges may be in the same estate as they were when this Parliament began, his Majesty hath taken off his restraint of the said Earl, whereby he hath liberty to come to the house: The Earl of *Arundel* being present, did render his humble thankfulness unto his Majesty for his gracious favour unto him, and gave their Lordships also most hearty thanks for their often intercessions for ^gP. eced, him unto the King, and protested his Loyalty, and faithful Service unto his Maiesty.

*How the parties arrested have been
set at Libertie.*

A N. 8. H. 6. no 5. 7. *William Lark* servant unto *William Wildred* a Burgesse of Parliament, being arrested and Imprisoned in the Fleet upon an Execution out of the Kings Bench, upon complaint made thereof by th: Commons, the
King

King by the advice of the Lords, at the request of the Commons, and by consent of the Plaintiff, ordered the said *William Lark* to be delivered out of prison: And that after the end of the Parliament, the plaintiff shall have execution again by Process, as if there had bin no execution had before.

An. 31. H. 6. the Parliament began at *Reading 6 March*, and continued untill the 18 day of *March*, and then after divers prorogations it began at *Westminster* the 14 of *February* following; in the interim of the prorogation in *April*, and the access the 14 of *February* following, *Thomas Thorpe* the Speaker is arrested in execution at the suite of the *Duke of York*, the Commons made request to the Lords for their Speakers liberty, the Lords demanded the opinion of the Judges (touching the arrest in time of Prorogation, and denyed him his libertie, whereupon the Commons were commanded to choose a new speaker.

*Anno. 39 H. 6. no. 9. Walter
Clark*

Clark of Chippingham, in the County of *Wilts* being committed to the Fleet for sundry condemnations, as well to the King as to others, is discharged and sent at liberty out of the Fleet at the petition of the Commons to the King and Lords, and that without bail or mainprife.

Anno. 12. E. 4. at the petition of the Commons, *William Hide* a Burgess of *Chippingham* in *Wilts*, being in execution in the Kings bench, is delivered by a Writ out of the Chancery, saving the Plaintiffs right to have execution again, after the Parliament ended, *no. 55.*

An. 17. E. 4. no. 35. it is enacted that *John Atwill* a Burgess for *Exeter*, being condemned during the Parliament in the Exchequer upon 8 several informations, by the pursute of *John Taylor* of the same Town, shall have as many writs of *superseas* therefore, as he will until his coming home.

Here ariseth a doubt whether the party priviledged might be delivered out of the execution without an Act

Act of Parliament, that is without the consent of both Houses and the King.

There may be much dispute upon this question, the strongest allegation against it is, that it will prejudice the Plaintiffs execution; but since the party privileged is not to be arrested for any debt, Trespass, or contract, *prout An. 5. H. 4. no. 7. Antedicto*, none can be arrested during the Parliament, but for Treason, Felony, or breach of the peace, *prout An. 8. H. 6. no. 57.* My opinion is, that the arrest upon an execution for debt, trespass, or contract, is meerly void: And then it can be no prejudice to the Plaintiff, but he may have a new execution after the end of the Parliament; so that an Act to deliver him that is so arrested, or to save the Plaintiffs rights for a new execution, is (*ex abundanti*.) and needless.

*The opinion of the Judges in Thorps
Case An. 31. H. 6.*

AS for declaration of the proceedings of the lower Courts, in such cases as Writs of *superse-
deas* of priviledge of Parliament be brought and delivered: The Chief Justice said there be many and divers *superse-
deas* of priviledge of Parliament brought into the Court, but there is no general *superse-
deas* brought to surcease all process; for if there should be, then this high Court of Parliament that mini-
streth all justice and equity, should let the process of the common Law, and so he shall put the partie complainant without remedie for so much as actions at common Law be not determined in this high Court of Parliament: and if any person that is a Member of this high Court of Parliament be arrested in such cases as be not for Treason or Felony, or surety of the peace, or for a condemnation had before the Parliament, It is used that all such persons

sons should be released of all such arrests, and make an *Attorney*, so they may have their freedome and liberty freely to attend upon the Parliament

And under correction be it spoken, the declaration of the Judges in *Thorps Case* being Speaker, and arrested in the interim after the adjournment of Parliament, *An. 31. H. 6. (viz.)* that there is no general *superfedeas* to surcease all process, must be understood for all time and not for all process, and thereby to exempt executions, and their declaration at that time also, that if any person that is a Member of this high Court of Parliament be arrested in such Cases as be not for Treason, or Felony, or security of the peace, or for a condemnation had before the Parliament, that is used in all such persons, shall be released of such arrests, &c. cannot be understood to except arrests upon execution sitting the Parliament, but of such arrests in the interim between the adjournment and the accessse as *Thorps* was; for otherwise,

wife, to say that the priviledge is from arrests for debt, is meer frivolous, and but a shew of priviledge, and no priviledge in deed: and whereas the Judges did then further declare, that it is used that all persons should be released upon such arrests, and make an Attorney, so they may have their freedome and liberty fully to attend upon the Parliament: I am of opinion that in such Cases they did not use to make an Attourny at all, for the partie had a *superfedeas* to stay all proceedings against him; for it is a breach of priviledge to Commence but a suite in Parliament time against a Member thereof, or else *Bago de Clare*, had not been punished for citing the Earl of *Cornwall*, whereas he might appear by a Proctor, *An. 8. E. 1.* nor had the Master of the Temple his petition been denyed to distrain upon a house of the Bishop of Saint *David*s in Parliament time, whereas the Bishops might make an Attorney to prosecute a *Replevin*, *An. eodem E. 1.* nor would King *E. 2.* have commanded

commanded by Proclamation that the Justices of Assize should *Superfedere*, where Barons or other Summoned to Parliament were parties, they then not being arrested, but Defendants only; It is not enough that a Member of Parliament be free in person onely, but in mind also; but how can his mind be free if he be subject to Suits and Executions, and being arrested in Execution, be without remedy for his liberty, unless by a solemn Act made by consent of King, Lords, and Commons; so that I conclude, leaving others to their own sense in this poynt, That all arrests upon Execution are meerly void in this case; that the party so arrested might be set at liberty by a *Superfedas* out of the Chancery, and that such deliverance is no prejudice to the Plaintiff, the former arrest being none, but meerly void.

But if you demand for ancient precedents, I answer, there are none recorded, for that the *Superfedas* was granted of course, (being due) and needed no Petition for

for it, yet there are Precedents of latter times to prove it directly, (*viz.*)

Ex Journal. Domus Communium Die Mercurij, 22. Februarii, Anno 18. Eliz. report was made by Mr. *Attorney* of the Dutchy, upon the Committee for the delivery of Mr. *Hales* man, *Edward Smalleeye*, arrested upon Execution, that the said Committees found no Precedent for the setting at large by the Mace, any person in arrest, (but only by Writ) and that by divers Precedents of Record perused by the said Commitees, it appeareth, that every Knight, Citizen, and Burgeſs of this house, which doth require priviledge, hath used in that case to take a corporal Oath before the Lord Chancellour, or Lord Keeper of the great Seal of *England*, for the time being: That the party for whom such Writ is prayed, came up with him, and was his servant at the time of the Arrest made, and thereupon Mr. *Hall* was moved by the house, that he should repair to the Lord Kee-
M per,

per, and make Oath in form afore-
said, and then to proceed to the ta-
king of a Warrant, for a Writ of
priviledge for the said servant, ac-
cording to the said Report of the
said former Precedent.

By this appears the remedy for
their liberties out of Arrests, and
that Executions are not exempted,
for Mr. *Hall* his man, was then in
Execution, as appears afterwards
in the same Journall: I find not the
Burgeesse did take an Oath in case
of priviledge for his own liberty,
happily the Sheriffs return, or a
certificate thereof was sufficient.

The Writ of priviledge being so
easie to be had, what needed any
Petitions to be made by the Com-
mons to the King, and the Lords
for the same? And as there is no
Precedent for this in the time of *E.*
3. R. 2. H. 4. nor H. 5. so there are
none to the contrary, and the Lords
in Queen *Elizabeths* time, did usu-
ally of their own authority deliver
their servants out of Execution if
arrested in Parliament time.

But now this doubt is cleared by
the

the statute of *Anno 1: Jacobi, Cap. 13.* for new Executions to be had against such as are delivered out of Execution by priviledge of Parliament, and for discharge of them, out of whose custody they are delivered, which statute notwithstanding saith; that it was heretofore onely doubted of, whether such deliverance by priviledge of Parliament were prejudicial to the Plaintiff or no.

*In what Case a new SPEAKER
hath been chosen.*

A *Nno 1. H. 4. N^o: 62.* The Commons presented Sir *John Chenye* Knight, for their Speaker whom the King allowed.

The next day the said Sir *John*, and the Commons came before the King, and Sir *John* declared, that for a sudden disease which happened, he was unable to serve: And that the Commons had chosen Sir *John Dorewode* in his place, beseeching the King to allow of him, which the King did, and commanded him to be Speaker, *N^o: 63.*

Anno H. 4. The Commons presented *William Sturton* their Speaker, the 18. *Maij*, the 22. of *May*, the said *William Sturton* made a Speech to the King, on the behalf of the Commons, and being required to exhibit certain Articles in writing, he immediately promised to do.

On the 25. of *May*, Sir *John Dorewood* did on the Commons behalf deny that they had given their assent to exhibite the said Articles in writing, *N: 9*

And on the third of *June*, the Commons presented the said *John Dorewood* for their Speaker whom they had chosen, for that the said *William Sturton* lay sick in his bed, and was not able to execute the said Office, *N: 11*. It should seem *Sturton* was sick for grief, that the King was not first acquainted with their choice of a new Speaker, before they presented him.

Anno 15. H. 6. The Commons presented Sir *Thomas Tyrrell* Knight, their Speaker in *January*.

The

The 11. of *March*, the King understanding Sir *John Tyrrel* was fallen sick, commanded the Commons to chuse a new Speaker, which they did that day.

Anno 28. H. 6. Sir *John Popham* Knight, was presented Speaker, he desired to be excused in respect of his age, and that a new choice might be made, whereunto the King agreed; And thereupon the Commons chose and presented Sir *William Tresham* Knight, the same day.

Anno 31. H. 6. *Thomas Thorpe* was presented Speaker, after the adjournment of the Parliament he was arrested in execution at the suite of the Duke of *Yorke*. The Commons at the access the 14. of *February*, pray his liberty, which was denied; And the Commons commanded to choose a new Speaker: The 16. of *February*, the Commons sent word that they had chosen Sir *Thomas Charleton* Knight, for their Speaker in place of the said *Thomas Thorpe*; and the Chancellor answered, that the King

M 3 liked

hked him, *No: 29.* these are all the ancient Precedents.

Anno 5. Eliz. Thomas Williams Esquire, was presented their Speaker.

This Parliament is prorogued divers times.

The Speaker dyes in the *interim.*

At their Accessse, *Anno 8. Eliz. 30. of September,* the Commons (by four of their house) signifying their Speakers death to the Lords, requesting their Lordships aide, to intimate the same to her Majesty, which was done.

On the first day of *October,* the Commons were assembled in the upper house: And her Majesties Commission read, directed to the Lord Keeper, repeating the whole business of Parliament, commanding, constituting, and appointing the Lord Keeper in her name, to call the Commons before his Lordship, and the Lords in the higher house of Parliament, and there in her Majesties name to will and command them to resort to their accustomed place, and there to chuse

chuse amongst themselves a new Speaker: And after they have made their Election, that three or four of them, for and in all their names, shall signifie the same unto her Majesty; and thereupon her Majesty will signifie unto them, on what day they shall present him unto her: this is the effect of her Commission.

The next day the Commons presented Sir *Richard Onslow*, the Queenes Solliciter for their Speaker.

Anno 14. of Eliz. *Robert Bell* was presented Speaker, the Parliament being prorogued divers times he was made a chief Baron of the Exchequer, and dyed at the accessse 16. of January, *Anno 23. Eliz.* the Commons acquainted the Lords with his death, and the same course was taken for a new Election, *prout antea, Anno 18 Eliz.*

*The Commission for Choise of a
new SPEAKER.*

ELIZABETH by the Grace
of God, Queen of *England,*
France, and *Ireland,* Defender of
the Faith, &c. To our Trusty, and
right Wel-beloved Councillour,
Sir *Nicholas Bacon* Knight, Lord
Keeper of the great Seal of *Eng-*
land, Greeting; Whereas in the
beginning of this present Parlia-
ment holden at *Westminster,* the 17.
day of *January,* in the first year of
our Reign, the Knights, Citizens,
and Burgessees, being assembled in
the same Parliament, were com-
manded by us to go to their accu-
stomed place, and there to chuse
amongst themselves one to be their
Speaker, according to the accusto-
med manner; whereupon the same
Knights, Citizens, and Burgessees,
did elect and chuse one *Thomas*
Williams Esquire to be their Spea-
ker; And the same their election,
did afterwards certifie unto us,
which we did allow and ratify,
since

since which time, this our present Parliament hath been continued by divers prorogations, until the 30. of *September*, in this present eighth year of our Reign; At which day the Lords spiritual and temporal, and also the said Knights, Citizens, and Burgessees, being assembled for this Parliament, at *Westminster* in their accustomed places; The said Knights, Citizens, and Burgessees, have declared unto us, that the said *Thomas Williams* since the last session of this present Parliament is dead, and thereupon have made their humble suite and Petition unto us, that they might have licence and Commandment from us to proceed and Elect amongst themselves, one other to be their Speaker, for the rest of this present Parliament yet to come; wherefore we having certain and perfect knowledge that the said *Thomas Williams* is dead, as they have alledged: And considering their humble Petition very meet and necessary to be granted, have appointed and constituted

M: 5.

you,

you, and by these presents we do will, and command, constitute, and appoint you for us, and in our names, to call the said Knights, Citizens, and Burgesſes, before you, and other the Lords Spiritual and Temporal assembled in this our present Parliament, in the higher House of Parliament at *Westminster*, and then for us, and in our names, to will and command the said Knights, and Citizens, and Burgesſes, to resort to their accustomed place; And there to Elect and chuse amongst themselves, one sufficient and able person to be their Speaker, for the rest of this present Parliament yet to come; And after they have so made their Election, That then three or four of them, and in all their names, shall signifie unto us; And thereupon we will further signifie our pleasure unto them, what day and time they shall present the person Elected before us, as heretofore hath been in like cases accustomed to be done: wherefore our will and pleasure is, that
you

you do diligently attend about the doing of the premises, and execute the same with effect; In witness whereof we have caused these our Letters of Commission, to be sealed with our great Seal, witness our self at *Westminster*, the first day of *October*, the 8. year of our Reign.

The last Ceremony used the first day of the Parliament is, that when the Lord *Chancellour* hath ended his Speech to the Commons to chuse their Speaker, then the Clerk stands up, and reads in *French* the names of the Receivers and Tryers of Petitions.

By whom Tryers and Receivers of Petitions were appointed and when.

CHAPTER the VIII.

SOME Records make it doubtful, whether the King and his Council, alone, or the Kings, his Council, and the Lords, did appoint these Receivers and Tryers,

I will recite the Precedents, and then deliver my opinion. *Anno 6 E. 3.* In the Parliament held at York, on *Wednesday Octab. sanct. Hillarij*, on the same *Wednesday*, it is agreed by our Lord the King and his Council, that the Petitions be Recorded, as was agreed in the last Parliament, and the Petitions be delivered unto Sir *Henry Edneston* Clerk of the Parliament.

Sir Thomas de B.

Sir Thomas de E. &c.

Item, it is agreed, that the Arch Bishop of York, the Bishop of Ely, &c. shall be Tryers, and proceeds, and shews how they are to be answered, &c. And the Parliament was adjourned to the next Day, for that the Lords were not fully come, and the cause of summons was pronounced the next Day, which was reckoned the second day of the Parliament.

Anno 14. E. 3. The Parliament held at *Westminster*, the *Wednesday* next after *Midlent funday*, in presence of the King.

First,

First, it is entred in the Roll, that Proclamation was made in *Westminster Hall* against wearing of Weapons; Ryots, &c. and unlawful games near the Parliament House, (then thus) & *mesme le jour searent les souzes Cretz Cesta voir*: Sir Thomas de Brayton soit Clerke de Parliam. Item pur Receivre les Petitions d'engleterre sont Assignes Mich. de Wats. Tho. B. &c. Then the time for the delivery, and the Tryers of Petitions.

Then that the *Thursday* next following the Parliament was adjourned unto *Saturday* &c. on which day was declared the causes of summons.

So here they are appointed in the presence of the King, but it is not named by whom.

Anno 15 E. 3. Lune, 15. Pasche, the Roll being thus, first it is agreed that *Sir Thomas Broughton* be Clerk of the Parliament.

Item, its agreed by our Lord the King, and those of his Councel who were then come, that a Proclamation be made, that none shall bear armes, &c. Then

Then followes the ordinary proclamation.

Item, in *Crie sic fait*, that whoeuer will exhibit Petitions unto our Lord the King and his Council, that they exhibit them between this and *Saturday* next, &c. & *seront Assignes*, to receive the Petitions of *England*, these under written, *Sir Thomas de E*, &c. and so names the Receivers and Tryers.

Item, It is agreed for that the prelates, Earls, Barons, and other Grandees, are not yet all come this *Monday*, the first day of the Parliament, and to continue the Parliament to the next day, being *Thursday*, &c. From thence it was continued also untill *Wednesday*, unto *Thursday* for the same cause, and on *Thursday* the cause of summons was proposed.

Anno 27. Ed. 3. the Parliament was summoned to begin on *Monday 15. Pasche*. the King and some few Lords came, and the Parliament was continued to the next day being *Tuesday*, on which *Tuesday* it was agreed by the King and Council.

cell, that Proclamation be made against wearing of Armes, &c.

And a Proclamation was made the same day, for delivering of Petitions by *Monday* next, to the King and his counsell.

Et seront Assignez, to receive the said Petitions, &c. *prout Anno 15.* And on *Wednesday* following the cause of Summons was declared.

Anno 18. E. 3. *Luna proxim. post Octab. Trinitat.* The Roll begins thus, *Enprimes fait assav. 9. a. Mesme le lundy*, there assembled in the Parliament Chamber, our Lord the King, and the Prelates and Grandees under written, *viz.*

The Arch-Bishop of *Canterbury*, The Bishop of *Chichester*, *Bath*, and *Ely*, and the Earl of *Huntingdon*, together with some Abbots and Barons, and Knights of the Counties (*Et foi recitz devant eux*, &c.) The summons of the Parliament to be as on that day; And the small appearance, wherewith the King was offended, &c. And the

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the King commanded the Parliament to *Tuesday*, being the next day.

Item, be it remembred, that our Lord the King commanded Proclamation to be made, &c. against wearing of weapons: And on the said *Tuesday* our Lord the King, and the said Prelates and the Bishop of *London*, and the Cardinal, together with the said *Grandeess*, assembled again in the said Chamber: *Et illoques furent accordes les noms du Ceux, qui receveroy ientles petitions du Parliament. en la Manner q se fuit Cest'ascavoir Primerement sont Assignez de Receyvoirs les Petitions d'engleterr.*

And so named the Receivers and Tryers, and because the Prelates and other *Grandeess* were not come on the said *Tuesday*, *Si fut accordes assentuz de continue le Parliam. tanq; au Mesterday pur attendre la venne des ditz grandes et de ce Mesterday tanq; a Tuedy*, on which *Tuesday* the cause of Summons was propounded, &c.

There are some Precedents of this

this nature, *Tempore* Ed. 3. to shew that the King and some Lords met the first day of the Parliament : And for that there appeared but a few Lords, the cause of Summons was not then declared, onely Receivers and Tryers of Petitions were appointed, and the Parliament continued unto another day, and the Records do not say directly by whom they are appointed, *prout Anno 20. E. 3. Furent Assignez*, but saies not by whom.

By these it doth not directly appear by whom these Receivers and Tryers of Petitions were appointed.

That of the 6. Ed. 3. saith, *pur nostrei sur le Roy & son Conncell*, by his Council are here understood those of the *Privy Council*, who were summoned to Parliament, and not by the Lords of Parliament, as shall be declared elsewhere.

The rest speaks indifferent that they were assigned, but names not by whom.

Vide the Parliament Roll of *Anno 37. Ed. 3.* when the Summons were

were declared first, before the names of the Receivers and Tryers were published according to the use at this day, and of all Parliaments since the 29. of E. 3. and there it is thus in the end of the cause of Summons, *Et autre le dit Roy vult q. si nul se sent greutz metto avant son Petition en ce Parliam. & si ne avoir Couvenable Repors & sur ce ad Assignee ascans de ses Cleres en le Chancellaris receivoirs des ditz Petitions*, then followes their names.

Here it appears, that the Kings will is, that if any find himself grieved, that he exhibit his Petition, &c. and he hath assigned certain of his Clerks of the Chancery to be Receivers, &c.

Anno 28. E. 3. Anno 43. E. 3. confirmile.

Anno 40. E. 3. The Lord Chancellor concludes his speech touching the Summons, The Kings will is, que chescun qui se sent greivez mette devant sa petition a ces sont assignez per luy de ses re & aussi de les triors.

The rest speaks indifferent, but this satisfies me fully, that none but
the

the King or the Lord Chancellor *de per luy* appoints these receivers and tryers, &c.

I have perused all the Laws of E. 3. of purpose for this, that some doubt hath been made thereof.

Who were anciently appointed Receivers and Tryers of Petitions.

R ECEIVERS of Petitions were ever the Masters of the Chancery, the Records name them *Cleres de la Chancellary*, and no other were anciently appointed, but they say that An. 6. E. 3. the Clerk of the Parliament who I think was a Master of the Chancery is appointed one, but none that had Writs of Summons were appointed Receivers, &c. since 6. E. 3.

This order was constantly observed whilest these Receivers and Tryers were in use; but since they began to be out of use, and named (*pro forma tantum*) the Judges are mingled with them: as none that were summoned to Parliament were appointed Receivers; so none but they that were summoned were appointed Tryers of Petitions. They

They were ever of the Prelates, nobles and Judges.

And the Chancellor and Treasurer were appointed to be called when need required, and they should attend as some Records have it.

An. 21. E. 3. the Receivers, and Tryers of Petitions of *England, &c.* shall call the Kings Serjeants, and the Tryers of Petitions of *Gascoyne* shall call unto them the Justice and Treasurer of Ireland, for *Irish* business if need be: then it follows, *Et pur efforcer les Auditors, et Tryers des ditz Petitions*: as well for *England* as for other places, these undernamed are ordained.

The Arch-Bishop of Canterbury.

The Chancellor.

The Treasurer.

And the Chief-Justice to be with the said Treasurer when they may intend it, and need shall be.

Within what time the Petitions were to delivered.

Primo die debet fieri Proclamatio primo in Aula vel Monasterio tenetur et postmodum in civitate vel villa

villa quod omnes illi qui petitiones & querelas deliberare voluerint ad Parliamentum, quod illas deliberent a primo die in quinque dies proximum sequentes, ex, Manuscript, modus reuendi Parliamentum Cap. de.

This order was anciently observed, as it may appear by the Parliament of E. 3. where the Proclamation is mentioned, *vide* 15. 17. 20. 25. Ed. 3.

In all the Parliament *Rolls*, which Record their Receivers, and Tryers, day is limited for the delivery of their Petitions.

They seldom allow six dayes, which hath some times been prolonged for 2 or 3 dayes, *ex gratia Regis prout An. 25. E. 3. Octabis purificationis et 25. E. 3. festo sancti Hillarii.*

The reason of this short time, for the deliverie of Petitions, was for that the Parliament did seldome last many dayes : And therefore they were then appointed also on the first day of the Parliament, although it was afterwards adjourned to another day.

Here

Here may be a doubt of the time for answering these Petitions whether during the Parliament only.

As many as time would permit were answered sitting the Parliament, and to that purpose the several Tryers had several places to meet in, and they were often put in mind by the Chancellor to attend the same *prout An. 25. E. 3. no. 8. in fine.*

What kind of Petitions they were.

They were for the most part petitions for private persons for relief of any wrong, or for the Kings grace *prout.*

An. 1. E. 3. Petitio Bartholomeu de Badlesmeere for restitution to Lands, and Charters, taken violently from him.

Petitio Henrici Com. Lancaster for delivery of evidences.

Petitio Johannis de Vinne to be restored to his office.

Petitio Thome de Northrope to be allowed his costs layed out in keeping the Kings Cattle of *Bromham.*

Petitio

Petitio William filii Eudonis le Zouch for an outlawry for murder.

Petitio Thoma de Brackly, of his liberties of Weasts and Strays, &c. seized by the King.

Petitio Ricci de Prorers, to be allowed a debt due by the King in his account.

Petitio Ballivarum, & proborum hominum ville de Norwich to be allowed 200 pound which King Edward the third borrowed of them.

Petitio Licia & Multon, to have justice in a sute begun in the Kings Bench against the Kings Father for certain mannors.

Petitio Elizabeth Multon against delay of justice.

Petitio Fran. Massey & other Merchants strangers touching a wrong done them in *France*, by Merchant strangers who are now in *England*:

Petitio Ode Lacer Merchant of London, for a redress touching a depredation in *Lumbardia in partibus Gothoniae*.

Petitio H. S. against a piracie by 4. of the French Ships, &c.

And

And amongst these, are sometimes petitions of a County, or a City, prout eodem *An. 1. E. 3. Rot. 3. in Dorso.*

Petitio hominum Westmorland quod exonerentur de patera Balivorum Regis ibidem.

A Petition of the Cinque Ports for an explanation of their Charter.

A Petition of the Dyers of *London* against false fulling, &c. of Cloth, &c.

How the Petitions were answered.

First, let us see their direction in the time of *E. 3.* They were directed (*Au. nostre sr le Roy & au son Councel*; some few otherwise prout *An. 1. E. 3. au Councel le Roy Monsteur a le Pours Prior de T.*

Al Tres honorable s Monfr. William de Clinton supplie, I de Tampli Merchant du Portugal: touching a robbery at Sea; Lord Clinton was Constable of *Dover*, and Admiral at that time, as I conceive.

But this occurs very seldome, yet they were received and answered generally

generally, they were directed to our Lord the King and his Council.

The question is who are here meant by the Kings Council, whether all the Lords of Parliament, or they only which were of his privy Council: I was long of opinion, that by the council were meant all the Lords of Parliament; But if you observe how the answers were given to these Petitions, you shall find that the consent of Parliament, was very seldome required.

Vide 6. E 3. which is the first Parliament that mentions the manner thereof, and thereafter the names of the Receivers and Tryers are appointed as follows.

Item, it is agreed, that the petitions which shall be tryed and determined by the aforesaid Prelates, Barrons, and Justices so appointed Tryers, shall be delivered over into the Chancery under the Seals of two or one of them at the least. And that the rest of the petitions shall rest under the Seals of the said Tryers in the custody of

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the

the Clerks, until the next day, and so from day to day, and that the petitions which are to be tryed *Coram Rege*, be tryed before his Majesty, calling unto him whom ye please.

And that those petitions shall remain under the Seals of the auditors or of some of them, until they be Reported before the King.

Here you see that the petitions are to rest under the Seals of the Tryers, and in the Custody of the Clerks (that is of the Receivers) until they be answered, and then to be sent from Day to Day, as they are answered unto the Chancery.

Except the petitions *Corum Rege*, that is, those that required the Kings Grace, they were to be tryed before the King, and to rest in the mean time under the Seals of the Auditors (*viz*) the Tryers.

To prove that by these words (the Councel) are not meant all the Lords of Parliament, but the Kings

Kings Council only, *vide*, An. 31.

E. 3. no 63. The answer of the Petition of the Commons (*viz*)

Il semble au Council que fait affair par grant bien sil plaist au Roy et a les gentz de la terre. Et puis nostre Seigneur le Roy per assent des gentz Commanda a la dite Coment adonque este autz devant luy auiser Come, &c. Touching an Act of provision against Rome.

Where I observe also a good testimony that Bishops are not Peers (or *gentes de la terre*) they are not hear understood, for they never medled in any thing against the Pope.

And the answers in these private petitions were such (as in my opinion) required not the consent of Parliament, *prout* if the Petition were for wrong done by a private person: *Ro.* let him have a Writ in the Chancery to enquire thereof, and thereupon *fiat justitia*, if for allowance of any thing in their account, &c.

Ro. let him have a Writ in the Chancery directed to the Treasu-

rer, and Barons of the Exchequer, to view and examine the same, and thereupon to make the allowance and the like.

If for delivery of Charters or the like in the Kings custody, *Ro.* let him have a Writ in the Chancery to the Treasurer and Barons of the Exchequer, to make search, &c.

If for reversal of an outlawry or the like, let him have a Writ in the Chancery to the Justice of the Kings Bench, to cause the Record to be brought before them; and if there be error, to reverse the same.

If for Piracy, or any other wrong done by Merchant strangers in foreign Dominions, *Ro.* let the Petitions be delivered in Chancery, and upon hearing of the cause (let justice be done, *secundum legem in tali usu usitat.*)

For these and more such peruse the Petitions of *E. 3.*

All their remedy is out of the Chancery, yet now and then, a Petition is of such weight or difficulty

ficulty, that the Matter is reported to the house, and there openly heard and determined (*prout* the Petition of the Abbot of *Thornton super Humber*) touching lands recovered by him in the Kings bench, whereof he was in possession, and afterwards disseized by *Hugh de Spencer*.

The answer is *Recordium & processus predicti Monstret*, in Parlamento ita quod *Jus inde fiat*, A. 1 E. 3. Rot. 1. in dorso.

And the long Petition of the two *Corbets*, *Eodem An.* which depended *Tempore E. 1. & 2.*

But it was answered *An. 11 E. 3.* by Tryers thus: *Soit Ceste Petition soit Mande a luy pur mesme le Breefe q'il fac regarder tout les proces don mencier est fait en cest Petition & Appellez Zeux qui sont de la dit Besoigne sans qil ne dyle mye au Judgment sanz le Roy*, *An. 1. E. 3.*

Rot. 9. Dorso, they sued for the Castle of *Tremington*, and divers other Lands which *Roger de Vantort* (whose heirs they were) gave unto *Richard King of Almaine* (the Earl

270 *Receivers & Tryers of Petitions. cap. 8*
of *Cornwal*) and to the heirs of his
body, the remainder to the heirs
of the said *Roger Vantort*: The Pe-
tition of *Elizabeth de Burgo* is
worth the observation. It is touch-
ing a recognizance enforced from
her unto *Ed. 2.* not to rejoyce any
of his enemies, not to marry with-
out his license, nor to sell any of her
Land, without his consent: the Copie
of which recognizance was annex-
ed to the Petition: the Answer is
by the Tryers, (*Perce q tesmoigne*
est q le dit escript est en la garderobe
dit breife in Chancery au gardeyn de-
la garderobe de fair venir lescript de
uant le Consaile sanz delay. Then
follows (*pur quel endorsement,* The
Writ was made, which was there
recited and directed to the Clerk of
the privy seal, (who was also Ma-
ster of the *Vwardrobe* commanding
him to bring the same writing, *Co-*
ram Consilio nostro in presente Parlia-
mento, &c. Teste Mipse. &c.

Per Petitionem de Consilio.

WHich shewes that the Chancellor had no other Warrant then the endorsement of the Petitions.

The Clerk of the privy Seal by vertue of this Writ brings in the said writing, which being examined and delivered in full Parliament, it was considered by the Lords and Commons that it was contrary to the Laws of the Land, and all reason; and therefore it was damned, *per agarde del Parliament*, And delivered it unto the said *Elizabeth*; By this Petition you may perceive that what was done in full Parliament, is so recorded.

So the long Petition of *Gee Staunton An, 14 E. 3.* was viewed and read in full Parliament, and assented unto by all in full Parliament: It was to demand Judgment in a Case depending in the Common pleas, which was of such difficulty for point in Law, that the Judges did forbear to proceed, and so the

272 *Receivers & Tryers of Petitions.* cap. 8
Lords of Parliament directed them
on which side to give Judgement.

Note, that the Commons Joined
with the Lords to damn the recog-
nizance of *Elizabeth de Burge*, and
so it was necessarily to avoid a Re-
cord; but the Commons did not
join in assent touching *G. de Stanton's*
Petition, for there the Lords did
but direct Justice to be done in ano-
ther Court.

In the time of *R. 2.* the Petitions
were directed sometimes to the
King, and his Council, as in *Ed. 3.*

Sometimes a *nostre tresdoute Sr.*
le Roy et ces noble Srs. en cest. Parli-
ament.

And some (*A nostre Sr. le Roy et*
a touz lez et comes. de son Roialme,
but they were publick Petitions, as
that of the officers of the *Mint*
within the Tower of *London*, and the
like.

And the Parliament sitting long
in those days, over they did in *E.*
3. time, most of the Answers to
these Petitions (if not all) were as-
sented unto by all the Lords, prout
An. 15. R. 2. the Petition of *Joan*
the

the wife of Sr. *Robert Swinbourn* Knight, directed to the King, and the Lords, shewing that the said *Sir Robert* enfeoffed divers gentlemen of certain Lands to the use of her, and of her younger Children, and of his last Will and Testament: And that *Thomas Swinbourne* his Son and heir entred violently upon the Lands, and possessed himself of divers goods and Chattles, &c. And by threats and maintenance kept her out, &c.

Answered thus.

The petition being read in Parliament, and the reasons of the one side, and on the other, and of all the Feoffees present in Parliament being heard, it was awarded by the King and all the Lords, that the said *Thomas Swinbourn* shall make full restitution, &c. And also, that the said parties shall come before the council of the King, at a day certain to be limited them by the said council, and there shew all their evidences, &c. And the coun-

cil to make a good end if they can ; if they cannot, to adjourn them over to the Common Law : And further, that the said *Thomas*, find to the petitioner, her Children, and Servants, and to the said Feoffees, and to the Executors of his Fathers Will, sufficient sureties for the Peace : and that he should do no maintenance, menace, nor other things whereby the Common Law may be any way disturbed of its right course, touching all the said matters. And moreover, because the said *Thomas* acknowledged that he sent unto certain persons, a Letter (shewed in Parliament) of horrible menaces to the Kings people touching this matter, he is awarded to the Tower of *London*, there to remain at the Kings Will ; The which imprisonment at the instance of the Duke of *Yorke*, the King afterwards pardoned him upon his good behaviour.

I have recited his answer somewhat at large : by this I gather, & by some answers of *E 1. E. 2 E 3.* that intricate busineses were discussed in

in open Parliament (what answer soever the Tryers had prepared) others of smaller moment were directed to be redressed by the *Chancery* without any further trouble to their Lordships.

But the Commons were not privy to their Answers, as I noted in those of E. 3. unlesse it were to such as otherwise legally could not pass, prout *An 23, E. 2. VVest. Craft. nat. sanct. Johann. Baptisti* (A nostr le Roy et a son Cons. l. monstrent Ercevesques, Evcsques; comites Barones et Autrez genz de la Cominaltie d'engle terre, who petitioned that they might let to farm the wastes belonging to their Mannors, which they held of the King in *Capite*, as well within Forrests at without, without the Kings licence: which Petition is indorsed *Coram Rege*, and the Kings Answer is thus.

Il ne puit estre fait sanz nouvele lui laquele chose fere la comminaltie de la terre ne vult nie uncore Assenti.

In the times of H. 4. Few Petitions were directed to the King and
his

his Council, some were directed to the King alone.

Some to the Lords alone.

And some to the Commons.

But I find none answered by the Commons only. If they were Petitions of grace, the Commons wrote only this Inscription under the first line, *viz.*

Soit baile as Sr. per les a Roy, or soit per le a Roy per les Seiniurs.

The others were sent up to the Lords without any directions; and here first began the private bills, now exhibited in Parliament.

In *An. H. 5. H. 6. and E. 4.* there are some Bundels of Petitions extant of these times.

But I cannot determine whether they were delivered to the Receivers of Petitions or no, many of them are directed to the Commons, some to the King and his Council.

By these answers it seems, that these and those also of *H. 4.* were assented unto in open Parliament, and none past by the Tryers alone as in the times of *E. 3.*

After

After these times we have no Bundles of Petitions extant in the Tower.

Petitions endorſed Coram Rege.

THese were Petitions of grace from the King, and therefore the Tryers might not answer them *rege inſulto*.

I will recite ſome of them, and the proceedings thereupon, &c. *viz.*

An. 1. E. 3. Rot. 3. Thomas Biſhop of Worceſter petitioned, that whereas he is charged in the Exchequer with divers tenths granted for E. 2. that the ſaid tenths might be allowed him in certain Bills in the Wardorbe, and that payment might be made to him of the reſidue per Affignation. eidem Episc. faciend.

Ro. Let him ſhew his Bills in the Chancery, and have a writ to the Treasurer, and Barons of the Exchequer, to allow him in Debts exacted of him in the Exchequer, the ſum contained in theſe Bills, & *quoad affignationem ſibi faciend.*
de.

278 *Receivers & Tryers of Petitions cap. 8*
de residuo summa in eisdem billis
Content. ponitur ista Petitio Coram
Rege.

The petition of the Bishop of Winchester, shewing that the Churches of *Estunes & Hameldon*, are annexed to his Bishoprick as things spiritual, and whereof the *Gardians* of the spiritualities, *Sede Vacante* are only to meddle, as the use of other Bishopricks, yet *Robert de Welle* Gardian of the temporalities, hath levied the profits thereof, and accounted for them to the King, to the value of 400 Marks, whereof he prayeth restitution.

Ro. videtur consilio, quod occupatio de fructibus huiusmodi ecclesiarum est injuriosa, sed propter possessionem habitam in hac parte, ponatur ista petitio Coram Rege.

Postea retractata ista petitione Coram Rege & Magno Consilio, concessum est quod Custodes temporalium infra scripti Episcatus non se intromittant Amplius temporibus vacationum de huiusmodi fructibus ecclesiarum
An. 1. E. 3. Rot. 9 Dorso.

Here

Here at this time some Petitions *Coram Rege* were answered at the great Councel, which was often assembled at the end of the Parliament, and there also were answered divers petitions of the Commons which were not answered in Parliament, as shall be shewed in the 2 book, *Cap. An. 14. E. 3.* at the Parliament held after Midlent, all businesses not being ended at *Easter*, the Parliament was adjourned till Wednesday seavennight after, and the King willed that at that day, the petitions which were not already answered, should be then heard, and duly answered, and those undernamed were assigned to set upon Petitions, *Coram Rege* (*viz.*)

The Bishop of *Chester*.

The Earl of *Huntington*.

Monfr. Thomas Wake de Iydel.

Monfr. John de Stonnard.

Monfr. William de Shareshal, &c.
Associez a eux les Chancellor, &
Treasurer, quant Busoigne serra No.
28. & 29.

An. 25. E. 3. Receivers and Try-
ers

280 *Receivers & Tryers of Petitions. cap. 8.*
ers being appointed, it followeth
thus.

And that alwaies there be present
when the said Petitions be read, in
case any of them doe touch the
Kings Chamber, Sir Thomas de
Brembre, or Sir Henry de Greistock
is appointed to be called to all Peti-
tions that concerned the Kings
Chamber only, and not generally
for all petitions which required the
Kings special grace, or Bounty.

*An. 4. E. 3. Apud Winton inter
Bundel Petition. Robert de Vere* Earl
of Oxford exhibited his Petition
for the office of great Chamberlain
of England, whercof his Ancesters
were seized in fee by the grant of
Henry King of England, un-
till H. 3. outed his Father Robert
de Vere (*sans Judgment*)

The first answer is, let him come
before the Councel, and shew his
deeds and monuments.

And having shewed his Charter
to the Councel, &c. The second
answer is, *Pur ce q cest chose touche es-
pecialment le Roy, soit ceste Besoigne
devant le Roy & son Conseil.*

The

The third answer to the Petition, is, *soit ceste petition mande au Chancellerie, & le Chancellor pris a luy les Justices, & autres Sages en Conseil ordinent remedié en ce cas.*

An. 16. R. 2. no 32. Inter petitiones Communium Roberti Atmulle, & Alice his wife prayed the Kings pardon for that they were wrongfully condemn'd for taking of 700 pound of Treasure Trove at Gilford.

Ro. let them sue to the King, for this is no petition of Parliament.

The meaning is, this is a Petition of grace, and could not be answered by the Council *Rege inconsulto.*

Nota, the Kings Council prepared all the answers to the Petitions of the Commons, to compare with the answer to this petition made in the upper House of Parliament, *An. Jacobi.*

That Bills of restitution to blood begin in upper House only, and ought to be first signed by the King.

An.

An. 1. H. 4. no. 18. amongst the Petitions of the Commons, the Citizens of *Lincolne* pray to be eased of their Fee Farme, being 110. pound, which they are unable to pay.

Ro. let them sue to the King who will be gracious, which is as much in effect, as (*Ponatur ista petitio Coram Rege*) and not to begin with the Commons.

An. 29. E. 3. no. the 18. the Petition by the Commons touching *Alienations* without license *tempore H. 3.*

Ro. soit Monstre, declare a nostre fr. le Roy.

Of Petitions endorsed per authoritatem Parlamenti.

THe first of this sort I find in *An. 15. R. 2.* to the Petition of *Richard Pryour*; the direction is thus.

A nostre tres puissant & tres gracious fr. le Roy & a son tres honorable Councel en Parliament complains, that whereas divers Lands in the Counties

Counties of *Glocester*, and *Somerset*, &c. which were the Lands of *Tho. de la River*, sonne and heir of *Richard de la River* (who held of *E. 3. in Capite* lately within age, and in ward to the King, and dying within age, were delivered by commandement of *E. 3.* unto him the said *Richard Pryor* and *Jane* his wife, Cousen and Heir to the said *Thomas* for that *Agnes* the Sister of the said *Thomas* was a Nunne professed in the Abbey of *Cheston* as by the Records, &c. appeareth.

That presently after the said *Liverie* made, he and his wife were disseised by *Richard Cleydon*: and the said *Agnes* his Concubine, who was a Nunne professed, and by *Tho. Brook*, &c. and their maintainors, and for which they have been in suite these 15 years, and are like to be utterly disinherited, &c.

The answer is thus endorsed, Let this Petition be delivered in Chancery, and let the Chancellor by authority of Parliament cause the parties to come before him in the Chancery, and there the matter comprised

284 *Receivers & Tryers of Petitions* cap. 8
fed in this petition be diligently
viewed and examined, the reasons
of the one part, and the other heard;
let that be done by authority of
Parliament, which right and reason
(*& bone foy bone conscience*) requires
in the case. I may doubt whether
these words, by authority of Parlia-
ment, were added to countenance
this answer or no; for if they had
omitted them, yet the Lord Chan-
cellor was directed by the Parlia-
ment to proceed, and his proceed-
ings warranted thereby, I find divers
other Petitions so answered this
Parliament, but not all.

Divers other Petitions were re-
ferred to be determined in the
Chancery that year, but they were
such as could not be determined by
the Common Law without these
words, *per authoritatem parliamenti
prout, &c.*

The petition of Sir *John Panely*
Knight, to be discharged of 30. shil-
lings rent upon an hundred acres of
asserted Lands part of his Mannor
of *Pay in Com: Northton*, which was
sometimes within the *Whittlewood*,
but

but since disforrested by perambulation.

The answer is, let this petition be delivered in the Chancery, and the Justices and the Kings Serjeants being called, and the matter well examined, let that be done which right and reason demands.

But in the following times most Petitions have the same words by authority of Parliament.

And it seems to be, that they were added, for that the parties were thereby directed to the Chancellor.

Whereas they might otherwise have remedy at the Common Law, and sued in Parliament only for that they were interrupted in their ordinary proceedings by Menaces, or maintenance, or the like, whereby their suits in Law were become long and intricate, and the Chancellor happily made dainty then to meddle in such cases, and peradventure, the defendant excepted against it, as may appear by this, that the Commons exhibited their Petition against these kind of answers,

An.

An. 8. H. 5. no. 12. in these words,

Item, praying the Commons in this present Parliament, that if any man sue a Bill or petition endorsed by these words, by authority of Parliament, let this Bill or Petition be committed to the Council of the King, or the Chancellor of *England*, to execute and determine the contents thereof.

Whereas the said Bill or Petition is not by the Commons of the Land, required to be affirmed or assented unto.

That no men to such a Bill or Petition (unless the assent, or request of the Commons be endorsed) be bound to answer contrary to the Laws of *England*.

Unto which was answered (*viz.*) *soit avise le Roy.*

And so the same answers continued in the times of King 8*H.* 6. and *E.* 4. notwithstanding this Petition of the Commons.



The Names of the *Speakers* of the Honourable House of Commons, as they have Assembled in *Parliament*.

I N the Reign of *William Rufus*, there was a great Council of Parliament held at *Rockingham*, as may be collected out of the History of *Eadmerus*, for he termeth the same, *Totius Regni Adunatio*; and saith, that a certain Knight came forth & stood before the people, and spake in the name & behalf of them all, whereby the mind and consent of the people was understood, who (as is conceived) was the Speaker of the Commons; but the Author nameth him not: this is mentioned only because of the antiquity thereof.

Petrus,

Petrus de Mouniford. 44 H. 3.

That he was Speaker of the House of Commons, may be collected out of the Register of *St. Albane*, *Fol.* 207 where it is said, that he *Vice totius communitatis* consented to the banishment of *Adomer de Valence*, Bishop of *Winchester*; by which also it may be conceived, that the Lords and the Commons in that time sate in several Houses, or at leastwise gave have their assents severally.

Scroope, 6 Ed. 3.
Monfieur William Tressel. 13 Ed. 3.

The Commons answer by his mouth, and therefore it is conceived he was their Speaker; though not so named in the Record.

Sir Peter de la Mare. 49 Ed. 3.
Sir Thomas Hungerford. 51 Ed. 3.

This is the first named Speaker upon Record, 51 Ed. 3. n. 89.

Sir Peirce de la Mare. 1 Rich. 2.
 Sir

Sir *James Pickering.* 2 Rich. 2.
 Sir *John Goldesborough.* 3 Rich. 2.
 Sir *John Goldesborough.* 4 Rich. 2.
 Sir *Richard VValgrave.* 5 Rich. 2.

He was the first that made excuse
 desiring to be discharged (for ought
 appearing in Record;) but the King
 commanded him upon his allegiance
 to accept the place, seeing he was
 chosen by the Commons.

Sir *James Pickering.* 6 R. 2.

No Speaker recorded from 6
 R. 2. to 17.

Sir *John Bushey.* 17 R. 2.

He was presented to the King in
 full Parliament by the Commons,
 the first I find so presented; he was
 a special Minion to the King.

Sir *John Bushey.* 20 R. 2.

There are many Parliament-rolls
 of R. 2. which mention no Spea-
 ker, as 11, 13, 14, 15, 16, 18.

Sir *John Bushey.* 21 R. 2.

O

This

This Parliament was held in the Palace yard of *Westminster*, in a long house built with Timber of purpose, left open at both ends; both the Houses sate together therein, an especial place made for the Speaker: the cause of this extraordinary meeting was the impeachment of the Duke of Gloucester, the Earl of *Arundel* and *Warwick*.

Sir *John Cheyney*.

1. H. 4.

He is stiled in the Roll not onely *Parlour*, but *Procurator de las Commons*: the next day after he was presented he grew sick, and the *Commons* made choice of Mr. *John Dorwood* in his place; and yet he came up with the *Commons* to the *Lords House*, and prayed to be discharged, by reason of his infirmity, declaring whom the *Commons* had made choice of, and prayed he might be accepted, which was granted; and he made the like Protestation as Sir *John Cheyney* had done, which was, that he might have liberty to amend any mistaking in that which he should deliver from the
Com-

Commons, and made none of the other requests now usual.

John Dorwood Esquire. 1. H. 4.

He made no excuse, for ought appeareth.

Sir Arnold Savage. 2. H. 4.

The first time appearing upon any Record that the Commons were required by the King to choose a Speaker, but afterward it is still continued, only omitted 16. of Henry the Fourth.

Sir Henry de Redeford. 4. H. 4.

Sir Arnold Savage. 5. H. 4.

After he had made the ordinary protestation concerning his own mistakings, he further desired the King in the names of the Commons, that they might freely make complaint of any thing amiss in the Government, and that the King by the next information of any person, would not take offensively that

which they should complain of in that behalf: which Petition was yielded unto by the King, 5. H. 5. 11. 8.

Sir *VVilliam Sturmy.*

6 H. 4.

Sir *John Cheyney.*

6 H. 4.

Parliamentum indoctorum, so called, because in the writ of Summons there was a Clause no Lawyer should be chosen.

Sir *John Tiptoft,*

7 H. 4.

He desired to be discharged, because of his youth, but he was nevertheless allowed of; but having forgotten to make the usual protestations upon the day of his allowance, he came up the next day and made it, and added further (which never any Speaker did before or since) that if any writing were delivered by the Commons in this Parliament, and they should desire to have it again to amend any thing therein, it might be restored to them; which was granted, R. Par. 7. Henry 4. v. 6. he was the son of *John Lord Tiptoft*, and in the tenth

tenth of *Henry* the fourth was made Lord Treasurer of *England*, & created Earl of *Worcester* by *H. 6.* while he was Speaker, he signed and sealed the Deed of the intailing of the Crown, 7 *H. 4.* with these words, *Nomine totius Communitatis.*

<i>Thomas Chancer Esq;</i>	9 <i>H. 4.</i>
<i>Thomas Chancer Esq;</i>	10 <i>H. 4.</i>
<i>Thomas Chancer Esq;</i>	13 <i>H. 4.</i>
<i>William Sturton Esq;</i>	1 <i>H. 5.</i>

This Speaker, without the assent of his Companions, did agree before the King to deliver in Parliament, certain Articles; but about three dayes following, the Commons finding themselves agrieved therewith, sent unto the Lords (the King being then present) Mr. *John Dorewood*, and divers of the Commons with him, and declared to the King that their Spcaker had no authority from them to yield thereunto, and therefore they desired to be excused therein, which the King was pleased to accept: about 2. months after the Commons coming before the King, did present for their

O 3 Speaker

Speaker the same Mr. *John Doreward*, because their old Speaker being sick in his bed was not able to execute the place, whom the King allowed of.

<i>John Doreward</i> , Esquire.	1	H.	5.
<i>Thomas Chancer</i> , Esquire.	3	H.	5.
<i>Walter hungerford</i> , Esquire.	2	H.	5.
<i>Richard Redman</i> , Esquire.	3	H.	5.
<i>Sir Walter Beauchamo</i> .	3	H.	5.
<i>Roger Flower</i> , Esquire.	4	H.	5.
<i>Roger Flower</i> , Esquire.	5	H.	5.
<i>Roger Flower</i> , Esquire.	7	H.	5.
<i>Richard Baynard</i> .	9	H.	5.
<i>Roger Flower</i> , Esquire.	1	H.	6.
<i>John Russel</i> , Esquire.	2	H.	6.
<i>Sir Thomas VWanton</i> .	3	H.	6.
<i>Richard Vernon</i> , Esquire.	4	H.	6.
<i>John Tirell</i> , Esquire.	6	H.	6.
<i>William Allington</i> , Esq;	8	H.	6.
<i>John Tirell</i> , Esquire.	9	H.	6.
<i>John Russel</i> , Esquire.	10	H.	6.
<i>Roger Hurst</i> , Esquire.	11	H.	6.
<i>John Bowes</i> , Esquire.	14	H.	6.
<i>Sir John Tirrel</i> .	15	H.	6.
<i>Sir John Tirrel</i> .	17	H.	6.

The King taking notice of the sickness of the Speaker, and that by reason

reason thereof he could not attend the affairs of the Parliament, commanded the Commons to make choice of a new Speaker; who accordingly did make choice of one Mr. *William Boerly*, and did by one *John Hody* (Knight of the Shire) inform the King thereof, who thereupon was allowed of by the King without any more ceremony.

William Boerly, Esquire. 17 H. 6.

William Tresham, Esq; 18 H. 6.

William Burley, Esquire. 23 H. 6.

William Tressam Esq; 25 H. 6.

John Day, Esquire. 27 H. 6.

Sir John Popham 28 H. 6.

His excuse by reason of his age and impotency by his servie in the war, was allowed of by the King, and the same day the Commons presented Mr. *William Tresham* for their Speaker, and he was allowed.

William Tresham, Esquire. 28 H. 6.

He made no excuse at all, for ought appearing on the Record.

Sir William Oldham. 29 H. 6.
He made no excuse.

Thomas Thorp, Esq; 31 H. 6.
Thomas Thorp, Esq; 31 H. 6.

He was arrested in execution at the suit of the Duke of York between two Sessions of Parliament; wherein the opinions of the Judges being demanded by the Lords, they answered, it belonged not unto them to judge of the liberties of Parliament; whereupon (without them) it was adjudged that he was not to have priviledge; which was signified to the Commons by some of the Lords, and the Kings pleasure for present chusing of a new speaker was declared unto them; whereupon they forthwith chose *Sir Thomas Charlton.*

Sir Thomas Charlton, 31 H. 6.
Sir John Venlock, 33 H. 6.
Thomas Tresham, Esq; 38 H. 6.
John Green, Esq; 39 H. 6.
Sir James Strangwaies. 1 Ed. 4.
John Say Esq. 7 Ed. 4.
William Allington, Esq; 12 Ed. 4.
William

William Allington, Esq; 17 Ed. 4.

John Wood, Esq; 22 Ed. 4.

William Catesby, Esq; 1 R. 3.

In these times the Lord Chancellor, Speaker of the Lords House (being for the most part a Bishop) took a Text out of Scripture or some other Theme, and grounded his Oration thereupon, therein declaring the cause of the Summons of the Parliament; and in conclusion thereof, as the use now is, declared to the House of Commons the Kings pleasure, that they should repair to their House, and make choice of a Speaker, not naming any day when they should present him (as is now used;) and when the Commons had chosen their Speaker, they sent up some of their House to the Lords to desire them to intimate to the King that they had made choice of a Speaker, not naming whom; and to move the King to appoint a time when they should present him, and (commonly the King having been formerly spoken unto) the day agreed upon by the K. was declared

O 5. to them;

them; at the day appointed, the Commons, presented their Speaker, who prayed that he might be excused; but his excuse not being admitted, he maketh the common protestation touching his own mistakings, without any petitions in the behalf of the Commons, as is now usual.

Thomas Lovel, Esq. 1 H. 7.

After Knighted and made of the Privy Councel to King *Henry 7.* and *Henry 8.*

John Mordant. 3 H. 7.

Sir Thomas Fitzwilliams. 4 H. 7.

Richard Empson, Esq; 7 H. 7.

Learned in the Laws, Recorder of *Coventry*, afterwards of the Privy Councel to *Henry 7.*

Sir Reginald Bray. 11 H. 7.

He made the usual protestation for himself, but there is no mention at all upon the Record concerning any petition for the liberty of the Commons.

<i>Robert Drury, Esq.</i>	11 H. 7.
<i>Thomas Inglefield, Esq.</i>	12 H. 7.
<i>Edmond Dudley, Esq.</i>	19. H. 7.

Learned in the Laws, he was afterward of the Privie Council to *Henry 7.*

<i>Sir Thomas Inglefield.</i>	1 H. 8.
<i>Sir Robert Sheffield.</i>	3. H. 8.

Recorder of *London.*

<i>Sir Thomas Nevil.</i>	6 H. 8.
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The Speakers presentment, excuse, and protestation, were only entered on Record before this time, but no oration of theirs till this time.

<i>Sir Thomas More.</i>	14 and 15 H. 8.
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Chancellor of the Dutchy of *Lancaster*, after Lord Chancellor of *England*, he was Speaker of the House of Commons in this Parliament, and Speaker of the Lords House the next; he made the usual protestation for himself, and prayed if any of the
Com:

Commons should in debate of matters speak more largely then they ought, that it might be pardoned by the King; which the King granted.

Thomas Audley.

21 H. 8.

Serjeant at Law, Chancellor of the Duchy of *Lancaster*, Lord Keeper of the Great Seal, in 24 H. 8. made Lord Chancellor of *England*, and lastly created a Baron: he made the usual protestation for himself; but there is no mention upon the Record of any petition by him made in the behalf of the commons.

I have not found any Speaker named in the Record or Chronicles in these years of H. 8. viz. 22, 23, 24, 25, 26, 27.

Richard Rich.

28 H. 8.

Afterwards made L. Chancellor, and created a Baron; the first that is recorded to have made request for access to the King: from him are descended the Earls of *Warwick* and *Holland*, now living.

Sir.

Sir Nich. Hare.

31 *H. 1.*

Afterwards Master of the Rolls, and after that Lord Keeper of the Great Seal of *England*, after which he lived but fourteen days.

Thomas Moyle Esq.

34 *H. 8.*

The first that is recorded to have made petition for freedom of speech ; the petition for priviledge from arrest is of latter dayes, but it appears in the first of *H. 4.* that *Sir John Cheney* then Speaker, made a general request, that the Commons might enjoy their ancient priviledges and liberties, not naming any liberty in particular ; and he is noted to be the first that is recorded to have made that request; but they all make the usual request or protestation touching themselves.

In the latter end of the reign of *K. H. 8.* there is no mention made in the Parliament-Roll of the presenting of any Speaker, nor in the time of *E. 6* or *Queen Mary*, nor during the reign of

The Speakers Names.

of Queen *Eliz.* when Sir *John Tucker* was Speaker, but the memories of the Speakers names of those latter times is onely presented in the Journals of both houses.

Sir John Baker. 1 *Ed. 6.* to 5.

Four Sessions. Chancellor of the Augmentations.

Sir James Dyer, Knight. 7 *Ed. 6.*

Serjeant at Law, afterwards Kings Serjeant, and Lord Chief Justice of the Common-Pleas.

John Pollard, Esq. 1 *Mary.*

Learned in the Laws, he continued Speaker during two Sessions.

Clement Higham, Esq. 1. & 2. *P.M.*

Learned in the Lawes, -and one of the Privie Councel, afterward Knighted, and made Lord Chief Baron of the Exchequer.

John

John Pollard, Esq. 2. and 3. P.M.

Learned in the Lawes, afterward
made Serjeant.

William Cordal, Esq. 1. & 2. P.M.

Master of the Rolls, and one of the
Privie Council; he was Knighted the
day he made his Oration, and was
Master of the Rolls when he was
chosen Speaker; as may appear by
comparing the date of his Letters
Patents, with the time of his being
chosen Speaker.

Sir Thomas Gargrave. 1 Eliz.

Learned in the Lawes, and one of
the Queens Council in the North:
he made the four Requests, ever
since and now usually made by most
Speakers, as appears by his Oration.

First, for free access to the
Queen.

Secondly, liberty of speech.

Thirdly, for priviledge from Ar-
rests.

Fourth.

The Speakers Names.

Fourthly, that his mistaking might not prejudice the House.

Thomas Williams Esq; 5 *Eliz.*

Learned in the Lawes.

Richard Onslow Esq. 8 *Eliz.*

The Queens Solicitor, he was first chosen Member of the Commons House, and then being made Queens Solicitor, had a writ to attend in the upper House; and upon the death of Mr. *Williams*, at the request of the Commons, was sent unto them, and they chose him their Speaker; but so, as the House was divided upon the question.

Christopher Wray Esq; 13 *Eliz.*

Learned in the Laws, afterwards Lord Chief Justice of the Kings Bench.

Robert Bell Esq. 14 *Eliz.*

Learned in the Lawes, after made Ser-

Serjeant and Lord Chief Baron.

John Popham Esq; 23 *Eliz.*

Solicitor to the Queen, chosen in place of Sir *Robert Bell*, who was made Lord Chief Baron, and died also before this Session. Mr. *Popham* was afterwards made the Queens Attorney, and after Chief Justice of the Kings Bench, and one of the Privy Council; when he was chosen Speaker, he was an Assistant in the Upper House, and sent for as Mr. *Onslow* was.

Mr. Serjeant *Puckering* 27 *Eliz.*

Till twenty eight, during two Sessions: afterwards made the Queens Serjeant, and Lord Keeper of the Great Seal.

Mr. Serjeant *Snag.* 31 *Eliz.*

Afterward made Queens Serjeant.

Edward Cook Esq; 35 *Eliz.*

Solicitor general, afterward made
Queens

Queens Attorney, and Knighted ;
 Lord Chief Justice of the Common
 Pleas, a Privy Councillor; and lastly
 made Lord Chief Justice of the
 Kings Bench.

Mr. Serjeant *Telverton.* 39 *Eliz.*

Afterward made Queens Serjeant,
 and after that one of the Judges of
 the Kings Bench, and Knighted.

Mr. Serjeant *Crook,* 43 *Eliz.*

Recorder of *London*, afterwards
 made Serjeant to King *James*, and
 one of the Justices of the Kings
 Bench, and Knighted.

Mr. Serjeant *Phelips.* 1 *Jac.*

He was, during the time he was
 Speaker, made Master of the Rolls,
 and yet sate as Speaker.

Sir *Ranulph Crew.* 12 *Jac.*

Serjeant at Law, afterwards made
 Kings Serjeant and Chief Justice of
 the Kings Bench. Sir

Sir Thomas Richardson. 18 Jac.

Serjeant at Law, afterwards made
Kings Serjeant and Chief Justice of
the Common Pleas, and after Chief
Justice of the Kings Bench.

Sir Thomas Crew. 21 Jac.

Serjeant at Law, afterwards made
Kings Serjeant.

Sir Thomas Crew. 1 Car. Reg.

Sir Heneage Finch. 1 Car. Reg.

Recorder of *London*, Serjeant at
Law.

Sir John Finch. 3. & 4. Car.

Queens Attorney, afterwards made
one of the Kings Council at Law,
then Chief Justice of the Common
Pleas, and lately Lord Keeper of the
Great Seal.

John Glanville Esq. 16 Car.

Ser.

Serjeant at Law, at the Parliament begun the 13. of *April* 1640. and was dissolved *May* 5. following; and so continued but twenty two days; afterwards he was made the Kings Serjeant.

VWilliam Lenthall Esq; 16 *Car.*

Learned in the Laws, one of the Benchers and Readers of *Lincolns-Inne*, at the Parliament which begun *November* 3. 1640.

Sir Harbottle Grimston Bar. 12 *Car.* 2

A Bencher of *Lincolns-Inn*, the publisher of *Sir George Crokes* Reports, at the healing-Parliament which began the 15 of *April* 1660. afterwards Master of the Rolls.

Sir Edward Turner Kt. 13 *Car.* 2

Learned in the Laws, a Bencher of the Middle Temple, at the parliament begun *May* 8. 1661. afterwards His Majesties Solicitor Generall.

Sir Job Charleton. 26. *Car.* 2.

Doctor Learned in the Laws.

Edw. Seymour. Esq; 26. *Car.* 2.

Speaker at this time to the house of Commons.



*Of Senators in General,
their Original and Necessity.*

HE that Sweareth in the pursuit of those studies that conduce to private recreation, as well as publike emolument, personates and represents a grave wise man; and merits the general applause of all persons: For,

*Omne tulit punctum, qui miscuit utile
dulci.*

And (if I may be a competent Judge) there is no Science accompanied with more delight to the Student, or benefit to the Commonwealth, into which he is incorporated, than that of Government:

P where.

wherefore being sufficiently convinced, that all the transactions of a well-regulated State are managed by solid reason, mature deliberation, and sound judgement, not by wavering opinion, uncertain fate, or fantastique fortune; I have made the original of Senators, their duty, dignity, internal and external qualifications, the Theme on which I intend to expatiate: But more particularly of the original cause of their institution or creation. For the performance of that task which I have voluntarily imposed upon my self, I have dived into the depth of civil knowledge, and pried into the *Arcana* of Philosophy; collecting whatsoever hath been related, penned, or experimentally known heretofore, either by Academick Learning, Parliaments in Commonwealths, Policy in Government, or History.

But to begin: Man, the perfection of the Creation, was not made a Citizen or Inhabitant of this World only, but Lord Paramount over all Creatures that have

a being within the compass of the terrestrial Globe: This authority and dignity was conferred upon him by the supreme Governour of Heaven and Earth, who hath descended so far below his sacred Self, as to make him his Co-partner in Government, adorning him with divine understand; to the intent, that the Scepter of this terrene Empire may be swayed by his Reason and Counsel. The cause of this co-union of Government between God and Man, proceeds from Reason; which being perfect, makes Man capable of imitating Almightyness; so that it appears, there is a kind of near alliance or consanguinity between the Creator and the Creature, who sometimes is made God's Vicegerent upon earth: yet without divine assistance, no reason or counsel can be termed good, or perfect: For, the seed of this glimmering resemblance of a Deity planted in Man, if it light on fertile ground, and that happen to meet with good culture, produceth a crop according to the expectation of the

Cœlestial Planter ; otherwise, it is like corn cast into a barren soyl ; whose product is nothing but brambles, thorns, or thistles. Thus then Man being reduced to a sense or feeling of those sparks of divinity that lie latent in him, should be wrought to a perswasion, that he hath the Character or *Idea* of a Deity in his mind ; the impression of the Creator's holy Image stamped on his soul ; and ought thereupon to be so industrious in the employment of his talent, and the management of his affairs, that his actions may speak him worthy, in some sense, of so heavenly a favour bestowed on him. Yet, though he be made God's associate (as it were) he must return him the glory, to whom it properly and primarily belongs ; and acknowledge all authority to flow from him, as from the Fountain : For, as brute Animals are not governed by Animals, but by an Herdsman ; no more can Man rule or govern Man, without the assistance and protection of Providence divine. And should any
man

man be so sordidly ignorant, or atheistically prophane, as to undertake the Government of any Country or Nation, without divine knowledge or assistance ; it must necessarily follow, that that State, Commonwealth, or Kingdom, and every Member thereof, be implunged into an Ocean of misery and infelicity : For, it is in vain to build upon the imagined welfare of a State, or Kingdom, if God be not the Protector and Patron thereof. It is then as conspicuous as the Meridian Sun, that all vertue, wisdom and goodness owes its original to God ; which did instigate the pur-blind, or rather pure-blind Heathen, that had only the rush-candle of Nature, to consecrate publicke Temples to Vertue, Faith, Concord, Wisdom, Peace, &c. And if *Ovid* the Ethnick durst be so bold, well may we then *à fortiori* affirm, and maintain,

*Est Deus in nobis, agitante calescimus
illo ;
Spiritus hic sacra lumina mentis ha-
bet.*

It is therefore our duty to endeavour the deserving a more noble title than that of meer Man, and strenuously to labour in the pursuit of Understanding, that flies a higher pitch, than either humanity or morality dare aspire unto ; that so, if possible, we may surpass all our Ancestors, and live according to the dictates of that which hath the greatest supremacy in us, *viz.* Reason ; by vertue whereof, we are made sensible of a Deity, know how to exercise Vertue, embrace that which is good, and avoid what is evil : this is that which endows a man with the qualifications of Wisdom, Valour, and Justice ; by this we are able to discern, that the terrestrial Globe is wheel'd about by divine wisdom; it is this that makes a man Noble, a *Hero* : which was the reason that the Lacedæmonians im-

imposed the title of Gods upon those persons, that were judged to move in the highest sphere of understanding; *homines de meliore luto*; men of a more noble allay, than dull mud-wall'd man can boast of: Nay *Homer* defies *Hector* in this ensuing Distich:

*Non hominis certe mortalis filius ille
Esse videtur, sed divino semine natum.*

So that we may maintain (without being Paradoxical) that that man, who is guided by solid reason in all his words and actions, is *quasi semi-deus inter mortales*; Demi-god among men.

Now, of such repute is a grave Counsellor; who hath reason for his Cynosure, and wisdom, his co-adjutors in all undertakings. Such persons are so necessary in a Commonwealth, that they can by no means be omitted or left out: For, the King being but a single person, cannot have an eye unto all the transactions of his Kingdom; besides, sometimes it happens, that

he is seduced from the conduct of reason, by yeilding to his affections, yet the Senate, elected according to the Law of the Land, and compacted or made up of vertuous, sober, grave, discreet persons, do from their place, as from a *Pharos*, or Watch-tower, look about them, and provide all things requisite for the discreet and well regulating of the State wherein they live; preventing all mutinies, seditions and dissentions that the rebellious rabble durst any waies attempt: Of such great use and necessity are they, and that not only to the King, but the people also; like unto the vital part of mans soul, which residing in the heart, enliveneth and quickens that which partakes of Reason, and is situated in the head: and a Monarch that is guided by the advice and counsel of a grave Senate, rules his Kingdom prudently, ly, and governs it discreetly. For, as reason in all her proceedings, makes use of the service of the senses; yet she alone determines, and deserves the greatest honour and esteem

esteem: so a Prince, though he admit of Counsel, is to be judged the wisest; and is uncontrollable in all his actions: for it is a Maxim among us, that *The King can do no wrong*. And as the hand distinguished into fingers is thereby strengthened, and made the more apt to lay hold on any thing; so he that governeth with the aid and assistance of Counsel, shall manage all affairs with the greater consideration and prudence. Their original did proceed from the benefit that it was imagined would accrue to the Commonwealth, whereof they were members, by their counsel: And although they, that first assembled men into Cities, who before like Savages, ranged over the woods, and inhabited the desarts dispersedly, without either Law or Order, first gained the Title of Kings; yet that course alone could not make them understand the dutiful Allegiance they owed unto their Sovereign: wherefore perceiving, that when they were civilized, and reduced from their brutality, the

thority of a single Person was not of sufficiency to curb and check them in the full career of their exorbitancies, they judged it convenient to have assistance from serious and grave Counsellors : which we find performed by *Romulus* the *Proto-basilens*, or first King of the Romans ; who supposing the Government of a single Person without a Senate to be perilous and unsafe, made a Convocation of 100 Senators, who out of respect to their gray heads, and grave understandings, obtained the name of *Patres*. *Theopompus* also, King of *Sparta*, trod the same path ; For, he constituted the *Ephori*, and invested them with eminent authority: where at his wife being offended, was so pragmatical as to tell him, That he had derogated from his dignity, and clipt the wing of his ensuing Posterity, by diminishing their authority and supremacy: But he replied, like himself, That the Counsel and gravity of a Senate would fortifie his Kingdom, and be instead of a Bulwark against the impious machinations

chinations and plots of rebellious Subjects. Whereby it is apparent, that Monarchs first embraced Counsellors out of necessity: and all rational men are of opinion, that those State-transactions are most firm and solid, that are digested by the wisdom of a Parliament, ere they come to a publick birth. Now, I call that a Parliament, or Senate, which by Royal Authority, and the general consent of the whole Nation, is freely elected, and constituted, to advise and govern the State; and consequently, a Senator, or Parliament-man, is one lawfully chosen into the number of those that are authorized to sit at the helm, and steer the Ship of State. And it hath ever been observed, that they were alwaies the most grave, discreet, and noble sort of Subjects; because there is no Society of Men, or Nation, how barbarous and brutish soever, but will voluntarily and cordially consent, that the Government should be imposed upon, and rest in those persons that are vertuous; and think

think it just and reasonable to obey them. Nor are there any so fit to govern, as the ancient, experienced, which are usually chosen; because others, either through want of maturity or experience, are usually withdrawn by their juvenile phancies, and recreations, from such serious places of authority: but a grave Counsellor is not disturbed or discomposed with extravagant affection, transported by appetite, or inveigled by youth; but by Reason directed, by Counsel fortified, and by Age made perfect. And further, Philosophers maintain, that in all things there are three degrees; Great, Small, and Indifferent: And that is judged the most perfect, that participates of either, and stands in an *Æquilibrium* between two: Now, the Senator standing as a mean or moderator between the King and People, the Monarch and his Subjects; may be the more intimately acquainted with the perfection of all things; and study what is the Office of a King, and the duty and Allegiance

Allegiance of a Subject; with the Rights, Properties, Liberties, and Laws appertaining to both; and so advise them accordingly; that the King may not turn tyrannical for want of Counsel, nor the people transcend the bounds of a moderate becoming liberty: Therefore he must of necessity be a man of excellent endowments, a clear intellect, and a piercing understanding, to dive into the intricacies of Government. *Scipio* saith, That as the end of Mariners, and their laborious endeavours, tends to a safe arrival into the intended Haven; the Physicians skill and art is employed for the recovering and preserving health in his distempered Patients; and the Captains valour levels at victory: So the happiness of Subjects, their glory, life, and liberty should be the *summa totalis*, or chiefest end that our Counsellor should aime at; all which he must labour to preserve, maintain and augment, by his industry and endeavour, to the utmost extent of his ability; and leave no stone unturned.

unturned for the benefit of the Republick, of which he is a Member. Nor is it my design to broach any new-fangled opinion, or to phancie a *Chimera*, or make my brain the womb or *Idea* of an Utopian Counsellor, that can only be imagined, and not found *in esse* (as *Plato* did in his Commonwealth, and *Cicero* in his Orator) but my discourse tendeth to a relation and description of such Persons as have liv'd heretofore, and *citra omnis controversia* *aleam*, may be hereafter. And as divine *Plato* composed, and reduced all those things into order, that might conduce to the felicity of his City, or Republick; the same course will we take in the Character of our Counsellor: wherefore perswade your self to be arrived at, or come to some famous *Emporium*, or *Piazza*; whereunto all persons, of all Nations, Countries and Cities repair; and we will disrobe every single person of some Vertue, Law, Custome, or Qualification, that shall seem most advantageous and beneficial to our enterprize; and therewith make
 up

up our Sage Senator, Grave Counsellor, or Perfect Politician : that they, who for the future are invested with such eminent dignity and authority, may imitate our Senator, and endeavour to be adorned with these ensuing qualifications.

There is nothing more clear, than that the Supreme Power, among many other gifts, hath conferr'd that of Reason upon Man, to the end that by vertue thereof, he may pry into the nature of Cœlestial, as well as Terrestrial bodies; and thereby honour, reverence, and adore the Creator.

Now, he that is sensible of the gifts of God, and the benefits of Nature; and doth, both by contemplation and action, employ this supernatural gift, slowly Apes the Deity, and thereby resembles him, as much as comes within the compass of mortality. But, they that contrary to Nature, and the end of their Creation, indulge their genius, delighting themselves in sensuality, neglecting, or totally deserting Reason; *Facie tantum homines*

homines sunt, non animo: carry only the outward aspect or complexion of a Man; because they are destitute of his more noble endowments.

Hence ariseth the variety of mens natures and dispositions, or rather conditions: for, some are born Free, Noble, Wise, and with an aptitude to govern; others, Vassals, Rullicks, Ideots, predestinated to servitude and bondage: All Societies of men, being willing and ready to submit to the Government of the more grave and wise; promoting, & accumulating honours on them, and Offices, with reverence and respect suitable to their deserving gravity and understanding.

Plato is of opinion, that God in mans first Creation, did by his omniscience so order it, that in the generation of those that are destin'd and adapted to govern, he hath distill'd some drams of gold in their composition; and in them that are to assist Kings and Superiours by their deliberate counsel, and mature advice, silver; but the Nature
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of Peasants and Mechanicks is tempered with Brass and Iron. Which similitude the Philosopher extends to the manners, nature, and capacitie of man.

For, although every man naturally desireth, that the issue of his loyns may resemble him; yet sometimes, though seldom, it happens contrary to his expectation: for Gold sometimes produceth Silver, a more inferiour metal. Therefore it is requisite, that a Prince should be capable of understanding the natural disposition^d and inclination of his Royal Off-spring, that their Iron may be converted into the Gold of a more noble disposition: but, if neither good Education, Documents nor Precepts can operate upon their inclinations, so as to cause a Metamorphosis, or Transmutation; the Government must be transferr'd to those, whose wisdom renders them more capable. For, it hath been prognosticated, and the event hath been experimentally known to succeed according to the Prediction, That they
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that are ruled by ignorant, mechanick Governours, come to ruine, destruction, and confusion. To prevent all which misfortunes, it is requisite, that our Counsellor be a natural Subject of that place or Country where he governeth; no forreigner: of the same Country, because that birth and being do not only oblige, but induce a man to believe, that it is honourable, just, and requisite for him to spend his blood in defence thereof, when occasion is offered: *Dulce & decorum est pro patria mori*? It is a sweet and comely thing to die for ones Country. And how can it be that any man, of what constitution soever, should not affect that place wherein his Parents, Neighbours, Friends, and Allies reside; and that Country to which he is indebted for his Life, Name, and Honour, and every thing else that is either for delight or necessity? *Non nobis enim nati sumus* (saith the Orator) *sed patria*; Our Country challengeth the greatest part of us. And it is most certain, that Nature hath so deeply rooted

rooted the affection to their native place in the mind of man, that never was any good Subject timorous, or unwilling to lay down his life, and hazard his fortunes in her defence, if necessity required. Nay, it hath been so prevalent, that the most impious and unnatural persons, that endeavoured the subversion of the place of their nativity, the very sight of their native soyl hath prevented their cruel enterprize. *Veturia* did dissuade her Son *Martius* besieging *Rome*, only by reducing to his memory the love and respect he ought to bear to his natural Country; branding him with the name of impious and audacious, for being so highly ambitious, as to disturb the quiet of that City wherein he was begot and educated; altogether unmindful of his Wife, Children, and friends that remained there. So notable was the piety of *Veturia* to her Country, and no less was that of her Son in forgiving it; which had been somewhat ingrateful to him at that time, through the cruelty of

of the Tribunes persecuting the Nobility. *Sertorius* also entreated *Pompeius* and *Metellus* to endeavour the procurement of his revocation; alledging that he took it for a greater piece of honour to have the name of an obscure Roman Citizen, than that of Emperour in any other place of the habitable World. Well then might *Naso* sing,

*Nescio qua natale solum dutcedine
cunetas
Ducit, & immemores non sinit esse
sui.*

The Obligation that devoteth and bindeth us to our Country, is great, upon this account; because our goods, persons and fortunes are therein contained. *Pythagoras* (as it is reported by divine *Plato*) judged it a crime of as deep a dye, to be guilty of ingratitude to the place of ones nativity, as to ones own Mother, to whom we are indebted for being: Nor can there be an offence so hainous, but the affection to our native Country should allay
and

and mitigate. Our Counsellor must be of natural birth, no Forreiner; because their counsel or advice is thought and accounted suspicious and dangerous; which was the reason that mov'd the *Athenians* not only to exclude strangers from their Council, but to drive them out of their Cities, lest they should aspire at the diginity of Magistracy, and instigate or work upon the minds of Citizens, so as to persuade them to Innovation; and so mutation of Laws, Customs and manners might ensue, and consequently Seditions and Rebellions. Which method the Venetians have diligently observed; for, it is their study, and their whole industry, to prevent their sitting among them in Council, lest they intruding under a false name or title, should arrive to dignity and eminency in the Republick. Besides, it is requisite he be of the Nobility; begotten of honest Parents; because honest parents produce honest children, for the most part. He must be of the number of noble and free Citi-

Citizens, who assumes his title from that Nobility that owes its original to Vertue; which he may partly challenge as his own, and partly as his Ancestors. They therefore that are nobilitated and adorned with their own peculiar virtues, as well as with those of their Predecessors, merit esteem, preferment, honour and fame, above all others, and are to be highly revered; and the reason is, because that Vertuous and good Parents, have a generous, good, virtuous and noble Issue: according to the Lyrick Poet,

*Fortes fortibus creantur, & bonis,
Est in jumentis, est in equis Patrum
Virtus, nec imbellem feroces
Progenerant aquila columbam.*

Now (as *Aristotle* affirmeth) that person that comes of a noble race, is the stem of a noble stock, and hath the affluence of Fortune accompanied with Vertue, hath arrived to the apex or perfection, the very Quintessence of true Nobility.
But,

But, because it is a rarity to find one person adorned with them all; Vertue alone can by her own right and property *nobilitare viros*. As for revenues, large acres, specious and spacious Mannors, but no manners, and the honour that we challenge from our Ancestors, without vertue, they are so far from being ornaments, that they prove a disparagement and a stain to the Owner. Such persons render the name of their Predecessors obscure; And through the vices of their Posterity, are entombed in the grave of oblivion: Therefore it is better to ascend the top of Nobility by a man's own vertue (saith the fluent Orator) than to be reputed for the opinion conceived of his Ancestors; because the Beginner of Nobility deserves most praise and applause. He that is the off-spring of a noble Family, deserves honour and esteem undoubtedly, with this proviso, that he make it the ~~But~~ and End of his Endeavours and Industry, to equal, if not excel, the Vertues of his Parents and Predecessors, and to gain
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unto himself more vertuous and glorious Attributes. And infinitely are they to be commended that do so; for they are so far from obscuring the Fame and Renown of their Fore-fathers, that they add a most resplendent lustre to it by their own vertue yet verdant and blossoming. The Law of the *Rhodians* is worthy of commendation; for they enacted, that those children that did lead a debauched life, not imitating the virtues of their Parents, should be utterly disinherited, and their Lands by a Deed of gift freely disposed of to the most vertuous of the Race or Family. It is an office of piety, to leave unto Posterity a demonstration of our gratitude and thankfulness to our Ancestors, whose heirs we are, not only of their external substance (the goods of fortune, I mean) but of their virtue, glory and renown, which is the true inheritance, and the best of all terrene possessions. For, 'tis not a stately Building hung within with coats of Arms, and badges of the honour of others, nor
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the vast unmeasurable pieces of Land belonging thereunto, but Vertue, that Nobilitates; As *Jeuenal* sings,

*Tota licet veteres exornent undique
cera*

*Atria, Nobilitas sola est, atque unica
virius.*

For, wheresoever Vertue is resident, it deserves more ample commendation than Fortune can lay claim to, because she refuseth none, but may be by every one embraced, she dwels in the homely Peasants Cottage, as well as in the Princes stately Palace; and we find the Sun-bak'd Peasant adorn'd with ruffethonesty, when the gaudy fantastick Lord oft-times is so vitious, that he is a stranger both to vertue and honesty. *Cleanthes* was a poor water-drawer; and, though his outside might seem rough-hewn, and he despicable and contemptible to one whose sight pries no farther than the external part: yet his mind was refin'd, and his intellect

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ennobled with such faculties as will speak him Man, to an understanding person, maugre all the force and violence of Poverty or Fortune: Nor did Vertue find *Plato* noble, but made him so. And it is most certain, that from Bondmen Kings have descended, and the offspring of Kings hath been enslaved: such revolutions, long tract of time, by the assistance of fickle fortune, doth produce: for, according to the Poet,

Si fortuna volet, fies de Rhetore Consul;

Si volet hac eadem, fies de Consule Rhetor.

Up and down,

Kiss and frown.

Fortune is no state at all.

Was not *Agathocles* from a Potter advanced to the Throne? What *Heraes* were *Romulus*, *Tullus*, *Hostilius*, *Tarquinius Priscus*, and the whole Race of the Romans, more than others? Of mean parentage
all

all, not *atavis regibus editi*. Hearken to *Jervenal*, and he will give you the same information:

*Et tamen ut longe repetas, longoque
revolvas,
Nomen ab infami gentum deducis
Asylo.*

Who therefore may be termed noble? He that by nature is made vertuous, and qualified or adorned with the attribute of wisdom. Moreover, as the exercise of our qualities is various, so are the degrees of Nobility. The Nobility of private persons, that lead a contemplative life only, may be called Philosophical Nobility; but the same in those that gain glory and renown by their sage and wise Counsel in behalf of the Commonwealth, or that manifest themselves stout and valiant in managing war for the defence of their Country, is termed Civil Nobility. The force and efficacy of this Nobility extends to Posterity, and engraves or make *monumentum* are *perennius*; That is,

armour of proof against the iron teeth of time; *Quod nec Jovis ira, nec ignis, Nec poterit ferrum, nec edax abolere vetustas.* By these ensigns of Fame and Vertue, men are stimulated and spurred on to imitate and exceed the vertue of all their Predecessors. And as in every Republick there are two kinds of Time, the one of Peace, and the other of War: so the Citizens are of two sorts; the one fitted for Peace, & the other adapted for War: The former by Arms doth enlarge the Territories & boundes of his native Country, or at least defend them from the invasion of forraign enemies; the other by wise counsel and grave advice doth rule and preserve it inviolable. Wherefore, a Common wealth should be composed of these two sorts of men: for, as in the management & proceedings of State-affairs, action followeth consultation, and is inferior to it; so those persons, by whose mature counsel and deliberate advice the Commonwealth was quietly, peaceably and discreetly governed, were of greater esteem than those that en'arged the
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the Confines thereof by War and Arms. *Homer*, the Prince of Græcian Poets, produceth *Agamemnon*, saying, He could sooner surprize and subjugate the City of *Troy* by the advice of ten *Nestors* or *Ulysses*, than by the valour of twice as many *Ajaces* or *Achilles*. *Pyrrhus* likewise was heard to use this expression frequently, That *Cineas* by his eloquence had won more Cities, than he with all his men of War had ever conquered. But, he that excelleth in wisdom and martial knowledge, deserves the Crown and honour above all: and though, as we said before, it is Vertue that makes a man Noble, without the additional riches of Fortune; yet it is requisite our Counsellor should be wealthy; because thereby he may be able to supply his Country, if compelled to wage war; for money is the sinews and strength of war. But good education, saith *Plato*, is the basis and foundation of solid wisdom and prudence. It is therefore requisite, that from their tender years they be instructed in all things that conduce to the accom-

accomplishment of man, *è cunabulis*, as we say, even from the cradle and swathing clouts, for then are they most apt to imbibe and suck in the most wholesome Precepts that shall be exhibited unto them: for then *anima est quasi tabularasa*, like a blank or piece of clean white paper, capable of any vertuous or noble impression. And as it behoveth a Republick to be stored with knowing Subjects, so ought they to be diligent in their education, and provide them good Tutors, that may instruct them, and chalk them out the way of Vertue. For, as a good husbandman diligently pruneth his plants, and lop-peth off the superfluous branches, when the season requires it, that they may grow the faster; so the Commonwealth, that may justly be termed the Parent and housewife of Subjects, ought to be extraordinary diligent to provide for the careful and vertuous education of youth, by lopping off the superfluous branches of vice, and engrafting them on the stock of Vertue. The

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Lacedemonians use to elect Magistrates out of the number of their grave, wise and sober Citizens, and call them publike Tutors, which might serve to educate and train up their younglings; and were always revered by them, being judged vertuous men in action, and well skill'd in military discipline. And the ancient Romans were as strict and careful in this point of education, as the *Lacedemonians*. *Cato* was so diligent in the nurture and education of his Son, that he disdained not to receive him into his tuition, and take him into his pupillage or guardian ship as soon as ever ripeness of age had fitted him for instruction. And although at that very time he kept *Chilo* the Grammarian, and one excellent in that art, in his house, to instruct his Children, yet he had not permission to correct them, but that was left to the discretion of the Father. Besides, he disdained to be engaged to a School-master for the instruction of his Children altogether; wherefore he taught them the Laws, manners and Customes of

his own as well as other Nations ; as also, how to dart, handle his Arms, swim, (which was anciently much in esteem ; for, *Aristotle* when he would set forth an absolute *Dulman* or *Ignaro*, saith, *ante vēr, ante γένετα*, he could neither read nor swim,) and to endure both heat and cold, that he might be hardened and seasoned for any enterprize. Besides, he penn'd a History with his own hands, and committed it to the perusal of his Son, that he might therein see and understand the heroic deeds and actions of his Ancestors, and be instructed in the art of Government. He never spake any unclean or passionate word before his Son, but was as circumspect in his language, as if the Vestal Virgins or Priests were in presence ; observing that ancient rule,
Nil dicta fœdum, facturæ hæc limina tangat

Intra quæ puer est —————

And this was the œconomique or domestique discipline of *Cato*, and of the major part of the Romans, especially of the better sort, in the educa-

education of their Children. In like manner the Philosophers of *Greece* compos'd plaies for the instruction of youth; which is preserved to this very day among us, (though that custome for some years was almost obsolete and out of request.) Nor were they only capable of indoctrinating, or laying down the tenets that are necessary to a happy and good life, but they were of ability to instruct in the Laws and manner of Government: Yea, this our present Age hath some Seminaries of Learning and Vertue (according to the *Græcian* custome) the Universities of *Cambridge* and *Oxford*, (though lately ready to expire, and almost demolished by the *Phanatics*, who hated all book-learning (as they term it) because their crimes were so hainous, that they went beyond the mercy of the book.) Hither Youth might resort, as unto a Harvest of Science and Knowledge, and might reap a crop of Vertue and good Discipline. But it were to be wish'd, that the Doctors and Tutors in our Universities, would instruct their Pupils in the

art of living, and not disputing well altogether, (for, so might they deserve preferment from the Commonwealth, and commendation from all solid persons,) and not take more delight in hearing a Prævaricator or Jester, than a solid Philosopher. In ancient times, Philosophers enjoyed their Pupils silence, and taught it also; but our modern wits teach them, only to talk or discourse; which is the reason the Nation is filled with so many worded Orators, and prating Philosophers. They endeavor not, *nunc diorum*, to refine the understanding, but to cloath the tongue with frothy language; and are applauded for alteration and strength of wit in their publike arguments, but not for modesty or solid wisdom: yet there is hope of a reformation in these Schools of Learning, when those loyal Spirits, that for their Allegiance to their Sovereign were dismissed, are re-instated. The ancient Græcian Academies were the Nurseries of Commonweals; and out of them (as from the Trojan Horse) issued most excellent Monarchs,

narchs, stout Captains, and wise Governors. *Alexander* and *Scipio*, with whose Fame the whole World hath ecchoed, had their primitive education in Schools of Literature; and many others, which I omit. Thus it is apparent, that men ought to be trained up in Schools, that so they may be instructed in the Principles of Government: wherefore it ought to be the care of every State, Republick and Kingdom, that their Seminaries of Learning be as well furnished & stored with Vertues, as the Citizens shops are with wares and commodities. Now then, we see that good education is requisite, and accomplisheth our Senator. Besides, he must have an inclination to Vertue; for if not, his evil disposition will hardly be bettered by Philosophy: for, the nature of man prompts him to evil; and he finding himself strengthened with the Science of Philosophy, is more expert, and gains more skill to palliate and plead for his bad actions: for the best of Sciences possessed by a man of an evil disposition, is depraved, and, contrary to its own nature, is a help to, and
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promoter of evil counsel. So that it may be maintained, that good instruction bestowed upon an evil nature, is oftentimes ill employed, and ineffectual. Though it is most certain, that Education prevails much with tender years, changing it from vice, and molding it according to the form of Vertue. *Diogenes* being demanded, How a man might lead a peaceable and quiet life; Replied, first, He must fear the Deity, who is the Author of all felicity. Secondly, He must bestow good education on his Children, the want whereof makes them enemies, and disrespectful to their aged Parents. Thirdly, He must avoid ingratitude to his friends, which of all crimes is the most odious & comprehensive, containing within it self a whole bundle of offences. *Ingratum dixeris, & omnia dixeris.* Mention but Ingratitude, and you have epitomized all sins in a word. Moreover, it is necessary that Children be instructed in the rudiments of Grammar, Rhetorick and Logick, whereby they may understand the property of speech, and the excellency thereof,

as also defend it by argumentation; Thus may he understand the Art of Eloquence, which is perfected by use, discourse, and surveying the works of Poets and Orators; and being thus instructed, he will shake off those petty inconsiderable things that are understood by every mean capacity, and take into consideration matters of greater weight and importance.

Of Travel; the Age, Gravity, and Election of a Senator.

The major part of the wisdom of a Counsellor consists in the knowledge of the Manners, Laws and Customs of all Nations; which is best attained by forrain Travel, as *Homer* sings of *Ulysses*,

*Dic mihi Musa virum capta post tempora Troja,
Qui mores hominum multorum vidit,
& urbes.*

And indeed, there is nothing accomplishes a man more than forrain Travel. *In motu melas.* There is a certain

certain kind of harmony in motion. And as the Master of Eloquence hath it, *Plebeia sane sunt ista anima, quæ suis affixa trabibus domi resident; illa diviniore, quæ cælum imitatur, & gaudet motu.* Those are dunghil spirits, that live confin'd to the narrow round of the place of their nativity; and that soul is of a more noble alloy, that like the Heavens rejoyceth in motion. Sir Thomas Moor writes, that a mans best friends in Travel is his coyn: yet under favour, notwithstanding the Authority of so learned a Grandee, if a man be accompanied with too many of these friends, his journey will be *motus trepidationis*; for according to the nipping Satyrist,

*Pauca licet portas argenti vascula
puri;
Nocte iter ingressus gladium, contum-
que timebis,
Et mota ad Lunam trepidabis arun-
dinis umbram.*

Whereas, as he immediately affirms,

Captabit vagans coram latrone viator.
The

The indigent Traveller shall sing before a *Qui va la?* or High-wayman. Yet would not we have our Counsellor so destitute of money, as thereby to expose himself to hardship and distress; but so handsomly accommodated, as that he may take a survey of all Countries with honour and credit. Yet in travelling, he must be very careful that he only come over again furnished and full fraughted with those Laws and Customes that are honest and civil, and leave those that are erroneous and evill behind him. For,

Terras, non animos mutant, qui transformare currunt.

Or at least they should do so, and not like some green heads that corrupt themselves, and learn nothing but the superstitious Idolatrous ceremonies of other Countries, and be sure to retain what is bad, though it prove to their own prejudice and ruine. He must be very exact in informing himself what Laws, Jurisdictions, what order of life, military Discipline, civil Government, and

& domestical life is in every Nation practised. He shall take particular notice of the situation of Countries and places, the building of Cities, their Fortification, Strength and Ammunition. Let him also understand the vertue of every Prince; how his People stand affected to him, and upon what terms; the wisdom of their Senate, the form and method of their Consultations, as far as without prejudice to himself it may be pried into; the nature and ingenuity of the people; what vertues they adhere to, and what vices they are most addicted unto; what Learned men, Souldiers and Commanders are in every Country to be found out; that so by the report of them to his own Nation, the best precepts may be cull'd out, and the rest rejected. Yet he must take heed, lest by the new-fangled fashions that he brings over, he make not the people effeminate, and careless of their own Laws, Customs, and ancient vertues: for as *Pliny* saith truly, *Est natura hominum novitatis avida*: Man's nature prompts him to embrace Novelty, which oftentimes proves

proves pernicious, and tends to the molestation of the Kingdom, Republick, or State. Many famous persons have taken delight in travel, as *Nestor*, *Menelaus*, and *Alexander the Great*, out of love thereunto, *Homer*, and *Democritus*, that merrily passed his time away, travelled all over *Egypt*, *Babylon*, and *Persia*; thereby hoping to obtain knowledge, that so their minds being stored with variety of observation, they might be the more accomplished, and remain content with their own fortune. The words that *Diodorus Siculus* reports to be written upon the Tomb of *Osiris*, are worthy the quotation and remembrance; which are these, or to this effect: *Osiris Rex sum, Saturni antiquior filius, qui nullum orbis locum reliqui, quem non attigerim discens ea omnia, quæ generi humano utilia sunt, & necessaria.* But if he want money to support him in travel, let him employ his time in the study of Geography, and Cosmography: And a smack he may have of Natural Philosophy; but to consume much time in that Science, is judg'd, by some;
su-

superfluous in a Senator. The field of knowledge is unmeasurable and infinite; which was the reason that men applied themselves to one particular Art or Science. *Aliquis in Omnibus*, and *nullus in singulis*, is no fit Motto for a Counsellor. Wherefore, we commit to the Jurisdiction of our Senator two sorts of Countries; the one is that which containeth both God and Man (not as if we prescribed God his place of residence, but we speak here according to vulgar capacities) not limited within the bounds of *Europe, Asia* or *Africa*; but is only surrounded by the posting Sun. The other is the place that Nature hath destined for his residence or being, as *England, France, Italy, Spain, Germany, &c.* For it belongs unto him to take a survey of the order & nature of the *Macrocosm*, the universal World, which the Latines call, *Majorem Mundum*; as well as the *Microcosme*, or little World, where he hath his habitation and abode, which they term, *Minorem mundum*. And when the mind is dismanacled of those worldly incumbrances which usually

usually adhere to the body, and by Travel and Science is perfected, as much as lies within the verge of humanity to be ; she officiates as she ought, affecting Vertue , and disaffecting Vice, suppressing the lusty insurrections of the flesh, and like a Monarch curbing and giving Laws to all exorbitant affections. Nay further, when the mind hath pried into the nature of the Heavens, considered their harmonious motion, knows the circumference of the Earth, her Longitude, Latitude, and the rarities contained therein ; hath plough'd the furrow'd Ocean, and seen the wonders of the deep , understands their causes, beginnings and ends ; what is the order and beauty of the glimmering Lights of Heaven, and what influence they have upon sublunary bodies: what causeth the passions or *deliquia* of the two Grand Luminaries , the Sun and Moon ; the reason of their Rising and Setting, their Diurnal, Nocturnal and horary motion ; what is the generation and corruption of all things ; what the nature of the Elements, of Animals, and the vertue
and

and beauty of that innumerable number of fragrant herbs that usually adorn the Earth ; when, I say, all these things are understood by one single person, and God acknowledged the Supreme Author and Governour of them all; shall not that Person be judged a Prince, rather than a meer Inhabitant or Citizen of the World, that is of so profound and polite an understanding ? Surely yes. *Socrates*, who by the Oracle at *Delphos* was pronounced the wisest of *Ethnicks*, being demanded what Countryman he was ; replied, *A man of the World* ; not confining himself to any particular place or Country ; for he thought himself to be an universal Prince. The same *Laertius* reports of that Tub-hugging Cynick *Diogenes*. *Omne solum forti patria*, is an old saying ; and *Omne solum sapienti patria*, carries as much truth with it, as the former antiquity. The whole World is a Wise man's Country : 'Tis a City that comes not under the tyrannous scourge of any *Nero*, *Domitian*, or *Caligula* ; Nor can be environ'd with walls, but is surrounded with the universal

universal Circle, governed by a comly order, and natural *decorum*, as it were with a Law certain and inviolable, palizadoed with no other fortifications than the Elements. The Citizens or Inhabitants of this place are termed Philosophers, commanded only by themselves, fortified with invincible minds, and sufficiently arm'd against the griping talons of penury, or any other misfortune that can seize upon man. Such Persons (nay, Princes as these, I may say, without entrenching on the Royal Charter of Kings) no fury of War can terrifie, no Faggot frighten, nor Axe disturb; for they are all valiant, resolute, & beyond the prejudice of Fortune.

Now, to the Age and Gravity of our Senator. They that have penned any thing of the life of man, did usually confine it to a certain proportion of time. *Plato* assigneth eighty one years: *Solon*, eighty; others affirm, that the continuance of mans life extends but to seventy, referring all to the number seven, because it frequently falls out, that every seventh year some alteration
or

or change appears in the body. The first seven years, Childrens teeth fall out; The next seven, their hair grows; The third, their body comes to its proper stature and height; The fourth, they encrease in bulk and thickness; The fifth, they arrive at their full strength and virility; The sixth, they find themselves addicted to pleasure and delight; The seventh, they come to the maturity and ripeness of wit and understanding; The eighth, they begin to be termed aged, or ancient; The ninth, weak and feeble, beholding to the support of the staff, and the help of Spectacles; And the tenth, they have one foot in the grave, and are reckoned to be *è peculio Proserpina*, of *Proserpina's* fold. Others there are, who maintain that this change happens every ninth year, and so ascribe the alteration thereof to every unequal number till twenty and one. *Pythagoras* the silent, called the eightieth year of mans Age fatal, dividing it into four times twenty, as followeth: Childhood, continues till twenty; Youth, other twenty; Man's estate, the other twenty; and old

old Age, the fourth, which puts a period to all. Some again compare Mans Age to the four Seasons of the Year: Childhood, is compared to the Spring; Youth, to Summer; Manhood, to Autumn; and Old-Age, to Winter. *Varro* divides Man's Age into four degrees, and comprehends every of them within the number of fifteen: Childhood (saith he) last till fifteen, for so long Children are weak and tender; Youth, till thirty, because till that Age men encrease and grow in height and thickness; Ripe Age till forty five, for so long strength of body continues, and men are then fit to be employed in publike affairs, Old-Age begins at sixty, and then the body is impotent, crazy and decay'd; so that they are not fit for State employments, lingring, and consuming till death come and trip up their heels, as he did all their Ancestors before them. To this division of mans Age we assent; but the distinction by number doth principally belong to Physicians; for they in exhibiting their medicines, observe certain critical daies. But our opinion

nion is, that the forty fifth year of man's age is most suitable for Consultation ; because then the strength both of body and mind is arrived to the very height. Besides, it is the middle age of Man; and at that time, if ever, the mind is perfect in judgment and experience, less attracted with brutish affections and desires, and least of all transported with rage, fury, or passion. When old *Rome* was in her glory, and shone with all her splendor, Senators were chosen at that Age, being then most perfect in body and mind : yet dare we not deny, but that some men may be termed Aged at thirty; that is, are both prudent, grave and wise. And we find upon record, that some, though very few, were created Senators by the Romans before the thirtieth year of their Age ; which we do not disallow, in regard that men may be reputed ancient for vertue as well as number of years : yet care must be taken that the Kingdom be governed chiefly by mature and grave Head-pieces ; for as *Plutarch* affirms, that Kingdom is most happy that hath store of
young

young mens Lances, and old mens Laws. Pertinent is that of *Euripides* to this purpose: *Didum est vetustum facta Juvenum, ceterum magis valent concilia Senum.* In *Athens* no person was created Senator before he was fifty years old. And in *Rome* it was permitted for any man of sixty to enter the Senate-house, though he never came to the Senatorship by choice or election; and after that year, it was left to his pleasure to be present or absent; so that they did neither bind him to, nor bar him from coming to Council. A good, though ancient Custom; for every man, though he hath seen as many Winters as hoary-headed *Noster*, ought to employ himself *pro posse suo*, according to his utmost ability, for the benefit of his native Country. *Plato* is of opinion, that men must learn till Age snow white hairs upon their heads. *Nulla dies sine linea*; that day is lost, in which a man hath not better'd his knowledge. Yet we prohibit decrepit, doting persons, whose judgements are as crazy as their bodies; and the reason is, because their counsels and

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consultations are for the most part dubious, and are rather hesitant conjectures than solid counsels, beginning : every Sentence with perhaps, perchance, peradventure, and the like : and this they do, as being sensible of their former imbecility and weakness, and so are unwilling to suffer a relapse into their juvenile and youthful errors and mistakes. Yet, if they have only so many years over their heads as may render them grave, solid and wise, they are perfect in uttering their conceits : for by use and experience) which is the best School-Mistress) they have gain'd, as it were, a third eye, whereby they are enabled to pry into, and discern with the more vivacity, the events and causes of things. And as every man is discovered by his speech, so is the prudence and wisdom of a Senator manifested by uttering his opinion. *Socrates*, casting his eye upon a Youth that he never had seen before, saies to him, *Speak, that I may know thee* : So may we say to our Counsellor, *By the solidity of thy speech, and the gravity of thy deportment, manifest thy*

thy self unto us. Now his opinion must be delivered in significant, but plain naked terms; not daubed over *fuco Rhetorica lascivientis*, with the paints of lasciviating Rhetorique, which becomes the Rhetorick School, better than the Parliament House. But so much for his Age and Gravity.

Now to the Election of our Senator. Among the Romans (in the times of Yore Lords of the whole World) Senators were elected divers waies; for, they were chosen either by the King, Consuls, Dictators, Tribunes of the people, the Censors or Chieftains. And the Custome of freeborn natives is to choose Senators among themselves, or else to commit the authority of Election to a single Person, who for Wisdome, gravity and dignity is Judged the most fit, and that is the King; Which the Romans did at first, *Romulus*, the first founder of their City, elected a hundred Senators; Which custome was followed by their succeeding Kings. But; when Kingly Government through the insolent government

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of *Tarquinius* the Ravisher, was removed, this Power of election (according to the quality of the time) was somewhat changed, yet not given to a multitude; for till the State returned to the Basis and foundation of Government, Monarchy, Senators were elected by Consuls, Censors, Dictators, or Chieftains. In all which Elections, till the time of *Augustus*, there is no mention made of lots, but the Fame, Family, Order, Office before born, riches and Possessions, were most of all considered and respected. Now, since there is no earthly Possession but comes far short of Vertue for excellency in the choice of Senators, that must be chiefly look'd upon; because they are reputed Defenders of the Law, Moderators of Liberty, and Conservers of a Kingdom. And as the Republick or Kingdom is oftentimes infected by the vice and impiety of Magistrates; so is it antidoted, corrected and repaired by their vertues. Such are the People of every Country, as are the Manners of their Governours; and the

the Subjects are apt to Ape the Customs and Constitutions of their Prince. It was well said of one, That the change of Princes Lives, and the alteration of Manners in Magistrates, would also work even to a mutation of the Customs, Institutions and Rights, nay, of the Kingdome it self. And to deal really with you, evill Princes are very much to be blamed, not in that they themselves are guilty of any crime, for it is a Maxim in our Common Law, *That the King can do no wrong*; but that thereby the Subjects are prone to be seduced, and led away to the same exorbitancies; which may justly be so termed in them, though not in a King. And indeed, how can it enter within the lists of Possibility for a man to Perswade other men to be vertuous, when he himself is vicious; The Romans derided *Scylla*, who, though a man infinitely debauched, and wholly given up to licenciousness, did nevertheless admonish and stir up others to Sobriety, Temperance and Frugality. And who

would not blame *Lisander*? though he swam in a contrary stream, yet he allowed and gave toleration to the Citizens for those vices which he himself abstained from and abhorred. But *Lycurgus* deserves commendation, because he never imposed the observations of that upon any man, which he himself did not first of all diligently follow. Yet in a free State, (if any such there be) it hath been observed, they have been directed by the suffrage of chance. This order of Election is observed by that Virgin *Venice*. The like institution *Solon* authorized among the Athenians for the choice of the five hundred Senators: For, out of every Tribe were so many elected, as were thought to deserve that dignity; whose names were put into a Pot; and into another as many Beans, the one half white, and the other black: now so many as hapned upon the white, were pronounced Senators; and those that chanced to light on the black, were repulsed and dismissed: which made *Thucydides* to call that Senate, *Senatum à Faba*. Besides, it was

was observed among the Romans what Office he had born before his Election, and with what fidelity he had discharged himself of his duty : for they made choice of their Senators out of that number of men only, that were by them styled *Patres*; which was, as it were, the Nursery of Counsellors, that so they might be known to be men famous for some publike exploit, or renowned for their Wisdom and Gravity.

Among us, those that sit in Parliament obtain that dignity three manner of waies :

First, By reason of their Tenure.

Secondly, By vertue of Writ; and

Thirdly, By vertue of Office.

Per Tenure are these: Archbishops, Bishops, Abbots, Priors, Dukes, Marquesses, Earls and Barons. And these are summoned to appear before the Parliament in the space of 48. daies.

They that come in *per Breve*, or by Writ, are these: Knights of the Shires, Burgeesses, Citizens, Barons of the Cinque-Ports, and the King's Council. There come also *per Breve*, directed to the seve-


ral Deans and Arch-Deacons of this Kingdome, two several Proctors of the Clergy for every several Deaconry & Arch-deaconry; and these Proctors of the Clergy are elected by the Clergy. There come neither *per Service*, or by vertue of Office, The Chief Crier of *England*; The Chief Usher; The Chancellor; The Treasurer; The Chamberlain, and Barons of the Exchequer; The Justices of either Bench; The Steward of *England*; The Porter, Grooms, and all tyed by service to be here done. The Stewards Office was to place the Lords; The Porter used to see there be but one door to enter in and go out at: And every one of the above-mentioned Officers, hath had his several Charge respectively. Thus have you had a description of our *Sage Senator*, of all the qualifications that tend to his accomplishment; his Duty, Dignity and Office displayed and laid open; the rewards due unto, and conferred on him; the ancient Customs of the Romans and Grecians touching this particular; their election and choice; as
also

also their manner of sitting in Parliament among us; how and by what means they obtain the Senatorship, or title of Parliament-men, according to our modern styles, who were so termed, because every Member of this High and most absolute Court of Justice in *England* (from which there is no appeal to any other for redress) should sincerely and discreetly *Parler la ment*, as it is in the old Norman French, that is, freely express their minds for the benefit of the Kingdom. Nor are the Laws of this Island only, and the Liberty of the Subject conserved by Parliament, but those of all well policied Kingdoms & Countries else in *Europe*. The Germans have their Diets; The Danes and Swedes their *Riicks Dachs*; The Spaniard calls his Parliament *Las Cortes*; And the French have (or at least should have) their Assembly of the three States, though it be now in a manner grown obsolete, because the authority thereof was by accident devolv'd upon the King: it will not be altogether impertinent to give you a succinct account of this

this memorable alteration ; which hapned as followeth : When our Nation had taken such large footing in *France*, that they advanced as far as *Orleans*, and had forced their then Soveragin to fly to *Bourges* in *Berre*, for sanctuary ; the Assembly of the three States not being able to convene during these Pressures in full Parliament, because that by those invasions the enemy made into the very bowels of the Kingdom, the Country was altogether unpassable, so that the power that was inherent in the Parliamentary Convention, of enacting Laws, assessing the Subject with Taxes, subsidiary Levies, and other Impositions, was transmitted to the King, during the rage and fury of that war only ; which proving of long continuance, that entrusted Authority began to grow habitual, and could never hitherto be taken from him ; so that his Edicts stand in lieu of Acts of Parliament. Out of these foregoing premises this Conclusion may easily be deduced, “ That the principal “ Fountain whence the King derives his happiness and safety,

is

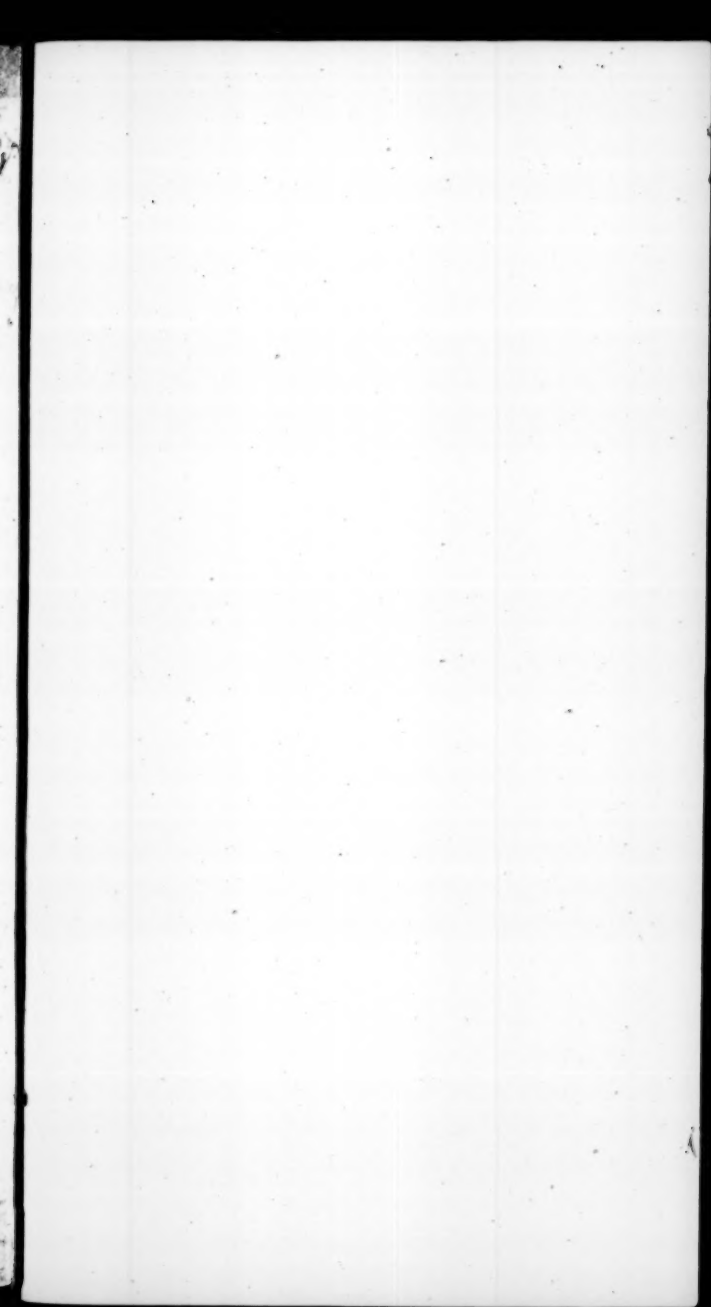
“is the Parliament: It is the great
“Conduit - Pipe which conveys
“unto him his Peoples bounty and
“gratitude; the truest Looking-
“glass wherein he discerns their
“loves. Now ~~the Subjects~~ love
“hath been ever accounted the
“prime Citadel of a Prince. In
“his Parliament he appears as the
“Sun in the Meridian, in the Alti-
“tude of his Glory, in his highest
“State-Royal, as the Law informs
“us. But lest we should spin out too
long a thred, and so wear the Rea-
ders Patience thread-bare, we will
conclude this first Book, and make
the discourse which we allot for the
scope and Subject of our next, run
in another Channel.



FINIS.

St Thomas Green





o The Ancient
Method
AND
MANNER
Of Holding
Parliaments
IN
ENGLAND

By Henry Elsynge, Esq;
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The Third Edition Enlarged.

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Tho. Dring, over against the Inner-
Temple-Gate in Fleet-street, 1675.

Commons should in debate of matters speak more largely then they ought, that it might be pardoned by the King; which the King granted.

Thomas Audley. 21 H. 8.

Serjeant at Law, Chancellor of the Duchy of *Lancaster*, Lord Keeper of the Great Seal, in 24 H. 8. made Lord Chancellor of *England*, and lastly created a Baron: he made the usual protestation for himself; but there is no mention upon the Record of any petition by him made in the behalf of the commons.

I have not found any Speaker named in the Record or Chronicles in these years of H. 8. viz. 22, 23, 24, 25, 26, 27.

Richard Rich. 28 H. 8.

Afterwards made L. Chancellor, and created a Baron; the first that is recorded to have made request for access to the King: from him are descended the Earls of *Warwick* and *Holland*, now living.

Sir

Sir Nichol Hade, 231 *H. 1.*

Afterwards Master of the Rolls,
and after that Lord Keeper of the
Great Seal of *England*, after which
he lived but fourteen days.

Thomas Moyle Esq., 234 *H. 8.*

The first that is recorded to have
made petition for freedom of
speech; the petition for priviledge
from arrest is of latter dayes, but it
appears in the first of *H. 4.* that *Sir*
John Cheney then Speaker, made a
general request, that the Commons
might enjoy their ancient priviled-
ges and liberties, not naming any
liberty in particular; and he is no-
ted to be the first that is recorded
to have made that request; but they
all make the usual request or prote-
station touching themselves.

In the latter end of the reigl of
H. 8. there is no mention made in
the Parliament Roll of the presenting
of any Speaker, nor in the time of *H. 6.*
or *Queen Mary*, nor during the reign
of

The Speakers Names.

of Queen Eliz. when Sir John Finc-
hering was Speaker, but the memo-
ries of the Speakers names of those
latter times is onely presented in the
Journals of both houses.

Sir John Baker. 1 Ed. 6. to 5.

Four Sessions. Chancellor of the
Augmentations.

Sir James Dyer, Knight. 7 Ed. 6.

Serjeant at Law, afterwards Kings
Serjeant, and Lord Chief Justice of
the Common-Pleas.

John Pollard, Esq. 1 Mary.

• Learned in the Laws, he continued
Speaker during two Sessions.

Clement Higham, Esq. 1. & 2. P. M.

Learned in the Lawes, and one
of the Privie Councel. afterward
Knighthood, and made Lord Chief
Baron of the Exchequer.

John

John Pollard, Esq. 2. and 3. P.M.

Learned in the Lawes, afterward
made Serjeant.

William Cordal, Esq. 1. & 2. P.M.

Master of the Rolls, and one of the
Privie Council; he was Knighted the
day he made his Oration, and was
Master of the Rolls when he was
chosen Speaker; as may appear by
comparing the date of his Letters
Patents, with the time of his being
chosen Speaker.

Sir Thomas Gargrave. 1 Eliz.

Learned in the Lawes, and one of
the Queens Council in the North:
he made the four Requests, ever
since and now usually made by most
Speakers, as appears by his Oration.

First, for free access to the
Queen.

Secondly, liberty of speech.

Thirdly, for priviledge from Ar-
rests.

Fourth.

The Speakers Names.

Fourthly, that his mistaking might not prejudice the House.

Thomas Williams Esq. 5 *Eliz.*

Learned in the Lawes.

Richard Onslow Esq. 8 *Eliz.*

The Queens Solicitor; he was first chosen Member of the Commons House, and then being made Queens Solicitor, had a writ to attend in the upper House; and upon the death of Mr. *Williams*, at the request of the Commons, was sent unto them, and they chose him their Speaker; but so, as the House was divided upon the question.

Christopher Wray Esq. 13 *Eliz.*

Learned in the Laws, afterwards Lord Chief Justice of the Kings Bench.

Robert Bell Esq. 14 *Eliz.*

Learned in the Lawes, after made Ser-

Serjeant and Lord Chief Baron.

John Papham Esq; 23 *Eliz.*

Solicitor to the Queen, chosen in place of Sir Robert Bell, who was made Lord Chief Baron, and died also before this Session. Mr. Popham was afterwards made the Queens Attorney, and after Chief Justice of the Kings Bench, and one of the Privy Council; when he was chosen Speaker, he was an Assistant in the Upper House, and sent for as Mr. Ousloe was.

Mr. Serjeant Puckering 27 *Eliz.*

Till twenty eight, during two Sessions: afterwards made the Queens Serjeant, and Lord Keeper of the Great Seal.

Mr. Serjeant Snay 31 *Eliz.*

Afterward made Queens Serjeant.

Edward Cook Esq; 35 *Eliz.*

Solicitor general, afterward made
Queens

Queens Attorney, and Knighted ;
 Lord Chief Justice of the Common
 Pleas, a Privy Councillor; and lastly
 made Lord Chief Justice of the
 Kings Bench.

Mr. Serjeant Tolverton. 39 Eliz.

Afterward made Queens Serjeant,
 and after that one of the Judges of
 the Kings Bench, and Knighted.

Mr. Serjeant Crook, 43 Eliz.

Recorder of London, afterwards
 made Serjeant to King James, and
 one of the Justices of the Kings
 Bench, and Knighted.

Mr. Serjeant Phillips.

He was, during the time he was
 Speaker, made Master of the Rolls,
 and yet sate as Speaker.

Sir Ranulph Crew. 12 Jac.

Serjeant at Law, afterwards made
 Kings Serjeant and Chief Justice of
 the Kings Bench. Sir

Sir Thomas Richardson. 18 *Yar.*

Serjeant at Law, afterwards made
Kings Serjeant and Chief Justice of
the Common Pleas, and after Chief
Justice of the Kings Bench.

Sir Thomas Crew. 21 *Yar.*

Serjeant at Law, afterwards made
Kings Serjeant.

Sir Thomas Crew. 1 *Car. Reg.*

Sir Henricage Finch. 1 *Car. Reg.*

Recorder of London, Serjeant at
Law.

Sir John Finch. 3. & 4. *Car.*

Queens Attorney, afterwards made
one of the Kings Council at Law,
then Chief Justice of the Common
Pleas, and lately Lord Keeper of the
Great Seal.

John Glanville Esq. 16. *Car.*

Sen.

Serjeant at Law, at the Parliament begun the 13. of *April* 1640. and was dissolved *May* 5. following; and so continued but twenty two days; afterwards he was made the Kings Serjeant.

William Lenthall Esq; 16 *Car.*

Learned in the Laws, one of the Benchers and Readers of *Lincolns-Inne*, at the Parliament which begun *November* 3. 1640.

Sir Harbottle Grimston Bar. 12 *Car.* 2

A Bencher of *Lincolns-Inn*, the publisher of *Sir George Crokes Reports*, at the healing Parliament which began the 15 of *April* 1660. afterwards Master of the *Rolls*.

Sir Edward Turner Kt. 13 *Car.* 2

Learned in the Laws, a Bencher of the *Middle Temple*, at the parliament begun *May* 8. 1661. afterwards *His Majesties Solicitor General*.

Sir Job Charleton. 26. *Car.* 2.

Doctor Learned in the Laws.

Edw. Seymour. Esq; 26. *Car.* 2.

Speaker at this time to the house of *Commons*.



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Bench Litany, and the Legend of
Duke *Humphery*.

O C T A V O.

OCTAVO.

Quintus Curtius his Life of *Alexander the Great*, Translated into English.

Observations on the Statesmen and Favourites of *England* since the Reformation, their Rise & Growth, Prudences, and Policies, Miscarriages, and Falls, during the Reigns of King *Henry VIII*, King *Edward VI*, Queen *Mary*, Queen *Elizabeth*, King *James*; and King *Charles I*. By *David Lloyd A. M.*

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An Abridgment of the Reports of *Sir Francis Moore*.

The Roman History of *Lucius Florus* Englished.

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A brief Chronicle of the late intestine War, in the Three Kingdoms
of

312 *Books Printed for Samuel Speed, &c.*
of England, Scotland, and Ireland,
from the year 1637, to the year
1663. By James Heath Gent.

*Ovidius Exulans: Or, Ovid Tra-
vestie, in Burlesque Verse.*

T W E L V E S.

*Arithmetical Recreations. By W.
Leybourn.*

Machiavels Discourses, and Prince.



*Of Senators in General,
their Original and Necessity.*

HE that Sweareth in the pursuit of those studies that conduce to private recreation, as well as publike emolument, personates and represents a grave wise man; and merits the general applause of all persons: For,

*Omne tulit punctum, qui miscuit utile
dulci.*

And (if I may be a competent Judge) there is no Science accompanied with more delight to the Student, or benefit to the Commonwealth, into which he is incorporated, than that of Government:

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wherefore being sufficiently convinced, that all the transactions of a well-regulated State are managed by solid reason, mature deliberation, and sound judgement, not by wavering opinion, uncertain fate, or fantastique fortune; I have made the original of Senators, their duty, dignity, internal and external qualifications, the Theme on which I intend to expatiate: But more particularly of the original cause of their institution or creation. For the performance of that task which I have voluntarily imposed upon my self, I have dived into the depth of civil knowledge, and pried into the *Arcana* of Philosophy; collecting whatsoever hath been related, penned, or experimentally known heretofore, either by Academick Learning, Parliaments in Commonwealths, Policy in Government, or History.

But to begin: Man, the perfection of the Creation, was not made a Citizen or Inhabitant of this World only, but Lord Paramount over all Creatures that have

a being within the compass of the terrestrial Globe: This authority and dignity was conferred upon him by the supreme Governour of Heaven and Earth, who hath descended so far below his sacred Self, as to make him his Co-partner in Government, adorning him with divine understand; to the intent, that the Scepter of this terrene Empire may be swayed by his Reason and Counsel. The cause of this co-union of Government between God and Man, proceeds from Reason; which being perfect, makes Man capable of imitating Almightyness; so that it appears, there is a kind of near alliance or consanguinity between the Creator and the Creature, who sometimes is made God's Vicegerent upon earth: yet without divine assistance, no reason or counsel can be termed good, or perfect: For, the seed of this glimmering resemblance of a Deity planted in Man, if it light on fertile ground, and that happen to meet with good culture, produceth a crop according to the expectation of the

Cœlestial Planter ; otherwise, it is like corn cast into a barren soyl ; whose product is nothing but brambles, thorns, or thistles. Thus then Man being reduced to a sense or feeling of those sparks of divinity that lie latent in him, should be wrought to a perswasion, that he hath the Character or *Idaa* of a Deity in his mind ; the impression of the Creator's holy Image stamped on his soul ; and ought thereupon to be so industrious in the employment of his talent, and the management of his affairs, that his actions may speak him worthy, in some sense, of so heavenly a favour bestowed on him. Yet, though he be made God's associate (as it were) he must return him the glory, to whom it properly and primarily belongs ; and acknowledge all authority to flow from him, as from the Fountain : For, as brute Animals are not governed by Animals, but by an Herdsman ; no more can Man rule or govern Man, without the assistance and protection of Providence divine. And should any
man

man be so sordidly ignorant, or atheistically prophane, as to undertake the Government of any Country or Nation, without divine knowledge or assistance; it must necessarily follow, that that State, Commonwealth, or Kingdom, and every Member thereof, be implunged into an Ocean of misery and infelicity: For, it is in vain to build upon the imagined welfare of a State, or Kingdom, if God be not the Protector and Patron thereof. It is then as conspicuous as the Meridian Sun, that all vertue, wisdom and goodness owes its original to God; which did instigate the pure-blind, or rather pure-blind Heathen, that had only the rush-candle of Nature, to consecrate publicke Temples to Vertue, Faith, Concord, Wisdom, Peace, &c. And if *Ovid* the Ethnick durst be so bold, well may we then *a fortiori* affirm, and maintain,

*Est Deus in nobis, agitante calescimus
illo; Spiritus hic sacra lumina mentis ha-*
bet.

It is therefore our duty to endeavour the deserving a more noble title than that of meer Man, and strenuously to labour in the pursuit of Understanding, that flies a higher pitch, than either humanity or morality dare aspire unto; that so, if possible, we may surpass all our Ancestors, and live according to the dictates of that which hath the greatest supremacy in us, *viz.* Reason; by vertue whereof, we are made sensible of a Deity, know how to exercise Vertue, embrace that which is good, and avoid what is evil: this is that which endows a man with the qualifications of Wisdom, Valour, and Justice; by this we are able to discern, that the terrestrial Globe is wheel'd about by divine wisdom; it is this that makes a man Noble, a *Hero*: which was the reason that the Lacedæmonians

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imposed the title of Gods upon those persons, that were judged to move in the highest sphere of understanding; *homines de meliore lute*; men of a more noble alloy, than dull mud-wall'd man can boast of: Nay *Homer* defies *Hector* in this ensuing Distich:

*Non hominis certe mortalis filius ille
Esse videtur, sed divino semine natus.*

So that we may maintain (without being Paradoxical) that that man, who is guided by solid reason in all his words and actions, is *quasi semi-deus inter mortales*; Demi-god among men.

Now, of such repute is a grave Counsellor; who hath reason for his Cynosure, and wisdom, his co-adjutors in all undertakings. Such persons are so necessary in a Commonwealth, that they can by no means be omitted or left out; For, the King being but a single person, cannot have an eye unto all the transactions of his Kingdom; besides, sometimes it happens, that

he is seduced from the conduct of reason, by yeilding to his affections, yet the Senate, elected according to the Law of the Land, and compacted or made up of vertuous, sober, grave, discreet persons, do from their place, as from a *Pharos*, or Watch-tower, look about them, and provide all things requisite for the discreet and well regulating of the State wherein they live; preventing all mutinies, seditions and dissentions that the rebellious rabble durst any waies attempt: Of such great use and necessity are they, and that not only to the King, but the people also; like unto the vital part of mans soul, which residing in the heart, enliveneth and quickens that which partakes of Reason, and is situated in the head: and a Monarch that is guided by the advice and counsel of a grave Senate, rules his Kingdom prudently, ly, and governs it discreetly. For, as reason in all her proceedings, makes use of the service of the senses; yet she alone determines, and deserves the greatest honour and esteem

esteem: so a Prince, though he admit of Counsel, is to be judged the wisest; and is uncontrollable in all his actions: for it is a Maxim among us, that *The King can do no wrong*. And as the hand distinguished into fingers is thereby strengthened, and made the more apt to lay hold on any thing; so he that governeth with the aid and assistance of Counsel, shall manage all affairs with the greater consideration and prudence. Their original did proceed from the benefit that it was imagined would accrue to the Commonwealth, whereof they were members, by their counsel: And although they, that first assembled men into Cities, who before like Savages, ranged over the woods, and inhabited the desarts dispersedly, without either Law or Order, first gained the Title of Kings; yet that course alone could not make them understand the dutiful Allegiance they owed unto their Sovereign: wherefore perceiving, that when they were civilized, and reduced from their brutality, the